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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 244

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, ET AL., *Petitioners,*

v.

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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No.

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, ET AL., *Petitioners,*

v.

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

Petitioners[1] pray that a writ of certiorari issue to

[1] Petitioners, who were petitioners or relators on an original proceeding on Suggestion For Writ of Prohibition in the District Court of Appeal, First District, below, are: Brotherhood of Railroad Trainmen, a labor organization; Order of Railway Conductors and Brakemen, a labor organization; Brotherhood of Locomotive Firemen and Enginemen, a labor organization; Ray Moore, an individual; Lowell Kennedy, an individual; T. C. Boland, an individual; and J. E. Eason, an individual.

review the final judgment of the District Court of Appeal, First District, State of Florida, entered in this cause on June 8, 1966. This case is a companion case to *Atlantic Coast Line Railroad Co., et al.* v. *Brotherhood of Railroad Trainmen, et al.*, No. /, October Term, 1965, wherein this Court on June 6, 1966, granted petitioners' application for reinstatement of a preliminary injunction of the United States District Court for the Middle District of Florida issued May 10, 1966, (which had been reversed and vacated by the United States Court of Appeals for the Fifth Circuit effective May 24, 1966) and shortened the times for filing a petition for a writ of certiorari to the Court of Appeals for the Fifth Circuit and opposition thereto. The conduct which is the subject matter of both the federal suit and this State Court suit (i.e., peaceful, orderly picketing of the premises of the Jacksonville Terminal Company by striking Florida East Coast Railway Company employees) is identical, as is the relief requested by the railroad plaintiffs in each case.

CITATION TO OPINIONS BEDOW

The District Court of Appeal, First District, State of Florida, did not render an opinion and its final judgment here involved, styled "Order", entered on June 8, 1966, is not yet reported, but will be officially reported at some later time in the Southern Second reports. The said Order of June 8, 1966, is reproduced in Appendix A hereto, and appears at the conclusion of the certified record filed herewith. The Order here involved was entered in an original prohibition proceeding instituted in the Florida District Court of Appeal, First District, at Tallahassee, Florida, on Friday, June 3, 1966, seeking to prohibit the Respondent,

Honorable Roger J. Waybright, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, from exercising jurisdiction over the subject matter of a pending labor injunction suit. The proceedings in the Circuit Court for the Fourth Judicial Circuit, in and for Duval County, Florida, have not been reported, either officially or unofficially. Pertinent pleadings and portions therefrom appear in the certified record filed herewith as exhibits to the Suggestion for Writ of Prohibition filed in the Florida District Court of Appeal, First District, below, and are reproduced in Appendix C hereto.

JURISDICTION

The Order, or final judgment, of the Florida District Court of Appeal, First District, was entered on June 8, 1966, and is printed in Appendix A hereto, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

The grounds on which the jurisdiction of this Court is invoked are as follows:

On May 24, 1966, the respondent, Jacksonville Terminal Company, filed suit against petitioners in the Florida Circuit Court for the Fourth Judicial Circuit, in and for Duval County, Florida seeking to enjoin certain peaceful picketing of its premises which it alleged constituted a secondary boycott[2] and which it affirmatively alleged was not subject to the exclusive,

[2] See paragraph 12 of complaint and amended complaint, Exhibits A and C to Suggestion for Writ of Prohibition (in Appendix C hereto).

primary jurisdiction of the National Labor Relations Board for stated legal reasons.[3]

Petitioners promptly answered the complaint asserting that the jurisdiction of the Florida State Courts had been preempted by controlling federal law.[4] Nevertheless, the trial court proceeded to try the case and on May 30, 1966, asserted jurisdiction over the subject matter of the case and entered its Order for Temporary Injunction[5] restraining the picketing involved although expressly finding that no violence or threat of violence was involved in such picketing.

On June 3, 1966, this case was instituted as an original proceeding in the Florida District Court of Appeal, First District, below, by the filing of a Suggestion seeking a writ of prohibition to prevent the respondent, Honorable Roger J. Waybright, as a Judge of the Florida Circuit Court for the Fourth Judicial Circuit, Duval County, Jacksonville, Florida, from exercising jurisdiction over the labor injunction case pending before him which involved only peaceful conduct "arguably" within the exclusive, primary jurisdiction of the National Labor Relations Board and which the State Court, under the doctrine of federal preemption and under controlling federal law, lacked jurisdiction to adjudicate.

A hearing on the Suggestion was immediately scheduled; all parties were notified; and on June 7, 1966,

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[3] See paragraph 11 of complaint and amended complaint, Exhibits A and C to Suggestion for Writ of Prohibition (in Appendix C hereto).

[4] Exhibit B to Suggestion for Writ of Prohibition (in Appendix C hereto).

[5] Exhibit E to Suggestion for Writ of Prohibition (in Appendix C hereto).

the Florida District Court of Appeal, First District, heard argument as to whether the Suggestion for Writ of Prohibition made out a prima facie case for a rule nisi to issue.

On June 8, 1966, the District Court of Appeal, First District, issued its Order here involved holding that the Suggestion failed to make out a prima facie case and denying the Suggestion. Such Order finally disposed of the original prohibition proceedings and therefore constitutes a final judgment in termination of such proceedings.

The Florida District Court of Appeal, First District, is the only court having general appellate jurisdiction over the trial court here involved under Article V, Section 5, Florida Constitution. Under Article V, Section 4, the Florida Supreme Court has no jurisdiction to issue a writ of prohibition to the trial court in this case,[6] and the decision of the District Court of Appeal denying the Suggestion is likewise not reviewable by the Florida Supreme Court under the Florida Constitution since it does not fall within the limited types of decisions of the Florida District Courts of Appeal reviewable by the Supreme Court under Article V, Section 4(2).

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[6] The jurisdiction of the Florida Supreme Court to issue writs of prohibition to trial courts is limited by Article V, Section 4(2), Florida Constitution, to cases where "questions are involved upon which a direct appeal to the Supreme Court is allowed as a matter of right". Direct appeals from Florida trial courts to the Florida Supreme Court are limited under Article V, Section 4(2), to judgments imposing the death penalty, to final judgments or decrees directly passing upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida or federal constitution, and to final judgments or decrees for the validation of bonds and certificates of indebtedness.

The decision of the Florida District Court of Appeal, First District, here involved is, therefore, a final decision by the highest court of the State of Florida in which a decision could be had. The decision *denies* the Suggestion[7] and thereby denies petitioners' federal claim that the Florida trial court was proceeding without jurisdiction over the subject matter of the labor injunction case before it in usurpation of the N.L.R.B.'s exclusive, primary jurisdiction.

It is clear under Florida law that prohibition is an appropriate remedy where a trial court is proceeding without jurisdiction over the subject matter of the action in usurpation of jurisdiction belonging to another forum. *Winn-Lovett Tampa* v. *Murphree* (Fla. 1954), 73 So. 2d 287;[8] *State ex rel. Swearingen* v. *Railroad Comrs.* (1920), 79 Fla. 526, 84 So. 444. See cases collected at 25 Fla. Jur., Prohibition, § 18 (Usurpation of Jurisdiction) and § 19 (Want of Jurisdiction).[9]

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[7] Compare *State ex rel. Emanuel* v. *Cooper* (Fla. 1963), 152 So. 2d 471, where the District Court of Appeal had *dismissed* a Suggestion, thereby indicating that the remedy of prohibition was not there appropriate.

[8] The *Winn-Lovett Tampa* v. *Murphree, supra,* case is one where the Florida State Court was proceeding to adjudicate a case within the exclusive, primary jurisdiction of a Florida administrative agency, the Florida Industrial Commission. Prohibition was held to lie and was issued. Clearly the fact that here it is a Federal administrative agency which has exclusive primary juridiction could not be a proper basis for denying similar relief.

[9] While many of these decisions involve writs of prohibition issued by the Florida Supreme Court to Florida trial courts, they were rendered prior to adoption of Article V of the Florida Constitution in 1956 establishing the District Courts of Appeal and limiting the general appellate jurisdiction of the Florida Supreme Court over Florida trial courts.

Prohibition will also lie to prohibit enforcement of an injunction entered in excess of the trial court's jurisdiction. *Tyler* v. *Thomas* (1934), 114 Fla. 368, 153 So. 848; *Joughin* v. *Parks* (1933), 107 Fla. 833, 147 So. 273. As stated in *State ex rel. Anderson* v. *Parks* (1927), 94 Fla. 91, 113 So. 702, 703:

> "In this state, however, the rule is settled that:
>
> " 'Where the want or excess of jurisdiction relates to the subject matter and is apparent upon the face of the proceedings of an inferior court sought to be prohibited, and that court has made some order in the exercise of such unauthorized jurisdiction, prohibition will lie, even though no plea to the jurisdiction has been tendered to and ruled upon by the inferior court.' State v. White, 40 Fla. 297, 24 So. 160"

It is respectfully submitted that this Court has jurisdiction to review the ruling below which constitutes a final decision by the highest state court in which a decision could be had upholding the jurisdiction of the state trial court in this labor injunction case and denying petitioners' federal claim of exclusive, primary jurisdiction in the NLRB under federal law.

Petitioners particularly rely upon the decision of this Court in *Local No. 438* v. *Curry,* 371 U.S. 542, 83 S. Ct. 531, 9 L.Ed. 2d 514 (1963) in support of this Court's jurisdiction in this case. See also, dissenting opinion in *Montgomery B. & C.T.C.* v. *Ledbetter,* 344 U.S. 178, 181-182, 73 S. Ct. 196, 197-198, 97 L.Ed. 204 (1952).

QUESTIONS PRESENTED

IS THE CONDUCT OF PETITIONERS OVER WHICH THE FLORIDA TRIAL COURT BELOW HAS PROCEEDED TO EXERCISE JURISDICTION, I.E., THE PEACEFUL AND ORDERLY PICKETING OF A RAILROAD ENGAGED IN INTERSTATE COMMERCE BY A LABOR ORGANIZATION THAT REPRESENTS GENERALLY BOTH RAILROAD AND NON-RAILROAD EMPLOYEES BUT WHICH IS REPRESENTING ONLY STRIKING EMPLOYEES OF ANOTHER RAILROAD CARRIER IN REGARD TO THE PICKETING INVOLVED, "ARGUABLY" WITHIN THE EXCLUSIVE AND PRIMARY JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD UNDER THE NATIONAL LABOR RELATIONS ACT?

DOES A STATE COURT HAVE JURISDICTION UNDER CONTROLLING FEDERAL LAW (INCLUDING THE NORRIS-LAGUARDIA ACT, 29 U.S.C. 101-115, AND THE CLAYTON ACT, 29 U.S.C. 52) TO ENJOIN PEACEFUL AND ORDERLY PICKETING BY A LABOR ORGANIZATION THAT REPRESENTS GENERALLY BOTH RAILROAD AND NON-RAILROAD EMPLOYEES BUT WHICH IS REPRESENTING ONLY STRIKING EMPLOYEES OF ANOTHER RAILROAD CARRIER IN REGARD TO THE PICKETING INVOLVED, WHERE THE CARRIER BEING PICKETED IS ENGAGED IN INTERSTATE COMMERCE AND IS REGULARLY PROVIDING ESSENTIAL LABOR SERVICES TO THE STRUCK CARRIER?

STATUTES INVOLVED

The following statutes are involved:

1. The *Labor Management Relations Act,* 1947, 29 U.S.C. 141 et seq.

The pertinent provisions of this Act are:

Section 2, Definitions, 29 U.S.C. 152.
Section 7, Rights of Employees, 29 U.S.C. 157.
Section 8(b)(4)(B), Unfair Labor Practices, 29 U.S.C. 158.
Section 8(c), 29 U.S.C. 158.

2. The *Norris-LaGuardia Act,* 29 U.S.C. 101 et seq.

The pertinent provisions of this Act are:

Section 1, 29 U.S.C. 101.
Section 2, 29 U.S.C. 102.
Section 4, 29 U.S.C. 104.
Section 5, 29 U.S.C. 105.
Section 13, 29 U.S.C. 113.

3. The *Clayton Anti-Trust Act,* 38 Stat. 730, 15 U.S.C. 17, 29 U.S.C. 52.

The pertinent provisions of this Act are:

Section 6, 15 U.S.C. 17.
Section 20, 29 U.S.C. 52.

4. The *Railway Labor Act,* 45 U.S.C. 151 et seq.

The pertinent provisions of this Act are:

Section 1, Definitions, 45 U.S.C. 151.
Section 1a, General Purposes, 45 U.S.C. 151a.

The foregoing statutory provisions, being lengthy, are set forth in Appendix B hereto, infra.

STATEMENT OF THE CASE

The following facts all appear from the face of the pleadings in the courts below or were admitted and found to be the fact by the trial court:

The petitioners are unincorporated labor organizations or members thereof (¶ 2 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). Petitioners are on legal strike against the Florida East Coast Railway Company (¶ 4 of complaint and amended complaint, Exhs. A &

C to Suggestion, Appendix C hereto). The respondent Terminal Company is engaged in the railroad terminal business, and in the course of such business provides services for the struck Florida East Coast Railway Company and for other railroad carriers using its facilities and services (¶ 1 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). On May 4, 1966, the petitioners commenced picketing the premises of respondent Terminal Company (¶ 6 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). This picketing was enjoined several hours later by federal court order in a case which is still pending in the U. S. District Court for the Middle District of Florida[10] (¶ 8 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto).

The picketing by petitioners is claimed by respondent Terminal Company to constitute an illegal secondary boycott (¶ 12 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). However, there is no allegation that the picketing involved violence or disorder, and the trial court specifically found that there was no evidence of any violence or threat of violence involved in the picketing (¶ 6 of Order for Temporary Injunction, Exh. E to Suggestion, Appendix C hereto).

Respondent Terminal Company is a railroad common carrier subject to the Interstate Commerce Act,

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[10] This is, of course, the same companion case which is also currently pending in this Court and in which this Court, on June 6, 1966, entered an Order reinstating the U. S. District Court's injunction which had been reversed and vacated by the U. S. Court of Appeals for the Fifth Circuit on May 24, 1966. *Atlantic Coast Line Railroad Company, et al.* v. *Brotherhood of Railroad Trainmen, et al.*, No. ——, October Term, 1965.

as are the Florida East Coast Railway Company and the other railroads served by the Terminal Company (¶ 2 of Terminal Company's sworn complaint in the federal court suit, which was introduced as defendants' Exh. 1 in the state court proceedings, Exh. F to Suggestion, Appendix C hereto). The amount of freight, passengers, mail and express traffic affected by the picketing is "extensive" and involves "service between points in Florida and the rest of the United States and adjacent foreign countries" (¶ 2 of Exh. F to Suggestion, Appendix C hereto). The volume of business of the respondent Terminal Company alone, which is affected, involves over $200,000.00 per month (affidavits attached to complaint, Exh. A to Suggestion, Appendix C hereto).[11]

In regard to the status of petitioners, the respondent Terminal Company alleges and describes them as a "labor organization" in its complaint and amended complaint (¶ 2 of Exhs. A & C to Suggestion, Appendix C hereto). In addition, respondent Terminal Company contended in the trial court that petitioners "were actually acting together with, and in concert with" members of a non-operating union, the Brotherhood of Railway Clerks (Excerpt from transcript of proceedings of Saturday afternoon, May 28, 1966, pp. 12-13, Exh. G to Suggestion, Appendix C hereto). While the petitioners were representing only railroad employees in conducting the picketing here involved, the official reports of the National Labor Relations

[11] Respondent Terminal Company conceded in the Florida trial court below that there was no question that this case would come within the monetary jurisdictional limits of the National Labor Relations Board (Proceedings of Saturday afternoon, May 28, 1966, p. 62; Proceedings of Sunday morning, May 29, 1966, pp. 44-45).

Board show that the NLRB has taken jurisdiction over two of petitioners (the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen) in regard to their representation of employees of non-railroad employers. *Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen and Phelps Dodge Corp.*, 130 NLRB No. 94, 47 LRRM 1461 (1961) (¶ D of Suggestion, Appendix C hereto). Petitioners also pointed out that the NLRB had asserted jurisdiction (by split decision) over certain picketing allegedly conducted by the non-operating unions, acting in concert, while they were representing only striking employees of the Florida East Coast Railway Company in their separate strike which has been going on since 1963 and that this assertion of NLRB jurisdiction had been affirmed by the U. S. Court of Appeals for the District of Columbia (by split decision). *International Brotherhood of Electrical Workers, AFL-CIO, et al.* v. *N.L.R.B.*, 350 F. 2d 791 (D.C. Cir. 1965), cert. den. March 21, 1966, 86 S. Ct. 1196, 16 L. Ed. 2d 206 (¶ D of Suggestion; pp. 4-5 of Answer, Exh. B to Suggestion, Appendix C hereto).

Based upon these undisputed facts and circumstances, appearing largely on the face of respondent Terminal Company's own pleadings, petitioners asserted in their answer in the Florida trial court that the subject matter of this suit fell within the exclusive, primary jurisdiction of the National Labor Relations Board (Answer of defendants, Exh. B to Suggestion, Appendix C hereto). They also asserted that the subject matter of the suit was preempted by controlling

federal law, and that the Norris-LaGuardia Act, 29 U.S.C. 101-113, divested the Florida state court of jurisdiction to issue injunctive relief in this case (Answer of defendants, Exh. B to Suggestion, Appendix C hereto).

The trial court denied this attack upon its jurisdiction and proceeded to assert jurisdiction over the case on May 30, 1966, by entering its Order for Temporary Injunction (Exh. E to Suggestion, Appendix C hereto). Petitioners thereafter filed their Suggestion for Writ of Prohibition with the Florida District Court of Appeal, First District, asserting that the Florida circuit court was proceeding without jurisdiction and in usurpation of the exclusive, primary jurisdiction of an administrative agency (see *Winn-Lovett Tampa* v. *Murphree*, Fla. 1954, 73 So. 2d 287). The Suggestion was denied on June 8, 1966 (Appendix A hereto).

ARGUMENT AND REASONS FOR ALLOWANCE OF WRIT

At least since *Garner* v. *Teamsters Union*, 346 U.S. 485 (1953), and clearly since *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 239 (1959), this Court has consistently and repeatedly ruled that state courts lack jurisdiction to adjudicate the legality of peaceful, orderly picketing which is "arguably subject" to the protections or prohibitions of the Labor Management Relations Act, 29 U.S.C. 141 et seq. The state courts in such cases lack even the jurisdiction to decide on the merits the jurisdictional question. *Marine Eng. Ben. Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173 (1962).

The basis underlying this federal doctrine of preemption has at least two aspects. One is that Congress

has vested an administrative agency, the N.L.R.B., which presumably enjoys an expertness in the field, with the exclusive, primary power to make the determination of whether a matter does fall within its area of special competency or not. *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 244-245 (1959). In short, Congress divested *all* courts, both state and federal, of their function to serve as primary tribunals to adjudicate the issue of jurisdiction itself. The reason for such withdrawal of jurisdiction is obvious. If the multitude of trial courts, state and federal, are simultaneously deciding jurisdictional issues in labor cases along with the N.L.R.B., its role as a specialized agency shaping the initial course of administration of federal labor law would be literally submerged and destroyed. See *Capital Service* v. *N.L.R.B.,* 347 U.S. 501 (1954); compare *Amalgamated Clothing Workers* v. *Richman Brothers,* 348 U.S. 511 (1955).

The second premise underlying the preemption doctrine is that it serves to insure and guarantee that federally protected rights will not be eroded away by varying and uncorrectable state court decisions. Thus, the preemption doctrine applies even when the expert services of the N.L.R.B. are for some peculiar reason not available but the conduct nevertheless falls within the scope of federal legislation. *United Mine Workers* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62 (1956); *Guss* v. *Utah Labor Relations Board,* 353 U.S. 20 (1957). Underlying this reason is the recognized fact that in labor cases the initial jurisdictional determination, and the "preliminary" or "temporary" injunction which flows therefrom, all too often decide and determine the entire dispute. Therefore, the unifying

function of this Court in reviewing federal question cases from state court systems is largely frustrated. See *Local No. 438, Construction & Gen. Lab. U.* v. *Curry*, 371 U.S. 542, 550. And without such uniformity it is impossible for the balance that Congress has struck between sharply competing economic issues to be maintained.

It is respectfully submitted that this case involves a clear and present conflict with this Court's many decisions explaining and re-explaining the controlling policy of federal preemption of state court jurisdiction over peaceful conduct "arguably subject" to N.L.R.B. jurisdiction. Certiorari should be granted to remove and correct this conflict.

That the conduct which the state court below enjoined is "arguably subject" to the N.L.R.B.'s jurisdiction is easily illustrated. Petitioners are accused of engaging in an illegal secondary (but peaceful) boycott.[13] The N.L.R.B. clearly has "arguable" jurisdiction over this type of conduct [§ 8(b)(4), 29 U.S.C. 158(b)(4)], unless some other circumstance present in the case makes it clear beyond doubt that it does not.

The only contention made by respondent Terminal Company below (see ¶ 11 of Complaint and Amended Complaint, Exhs. A and C to Suggestion, Appendix C hereto) is that the definition sections of the L.M.R.A., 29 U.S.C. 152(2)(3) expressly exclude application of the Act to petitioners and respondent Terminal Company. These definition sections, of course, do exclude

[13] See ¶ 12 of Complaint and Amended Complaint, Exhs. A and C to Suggestion, Appendix C hereto. Petitioners, of course, deny that their conduct is either illegal or secondary, or if secondary, illegal.

railroad carriers as "employers" under the Act and railroad employees as "employees" under the Act. But that is only the beginning of inquiry into an "arguable" area.

The fact that respondent is not an "employer" under the L.M.R.A. is clearly of little significance. This Court has squarely held that a railroad is not thereby precluded from invoking N.L.R.B. jurisdiction. *Local Union No. 25* v. *New York, New Haven and H. R. Co.*, 350 U.S. 155 (1956).[14]

A more serious question, however, is presented as to whether the status of petitioners excludes them from coverage under the L.M.R.A. In this regard, petitioners candidly and earnestly submit that their status is such that they are *not* covered by the L.M.R.A.[15] But recent decisions do not make this position so absolutely right as to put the question beyond all possible doubt or argument.

The recent case of *International Brotherhood of Electrical Workers, AFL-CIO* v. *N.L.R.B.*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, March 21, 1966, 16 L.Ed. 2d 206, demonstrates this plainly. In that case railroad unions representing striking employees of the Florida East Coast Railway Co. were found to be covered by N.L.R.B. jurisdiction despite their vigorous

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[14] This being true in 1957, it was even more so after the 1959 amendments to Taft-Hartley.

[15] Petitioners' position on the merits of L.M.R.A. jurisdiction has been and is that the Railway Labor Act, the Clayton Act, and the Norris-LaGuardia Act govern the legality vel non of their conduct to the exclusion of both state law and the L.M.R.A. The fact that petitioners take this position on the merits, however, does not serve either to grant or divest the N.L.R.B. of jurisdiction or to make the matter any more or less "arguable."

protest that the L.M.R.A. had no application to their conduct in representing railroad employees whatsoever. Certain of the unions there involved represented only railroad employees in their activities throughout the nation; others represented both railroad employees and non-railroad employees. The unions contended that they should be treated as Railway Labor Act organizations when representing railroad employees and as L.M.R.A. labor organizations when representing non-railroad employees. *Cf. Pan American World Airways, Inc.* v. *United Bro. of Carpenters & Joiners,* 324 F. 2d 217 (9th Cir. 1963) (holding that the status of an airline company as an employer under the Railway Labor Act or the L.M.R.A. depends upon what functions the employer is actually doing in the specific instance involved).

It can be seen from these cases that the question of coverage of the L.M.R.A., when it turns upon the status of either the employer or of the labor organization involved, can be an intricate and difficult one by any standards. Therefore, this Court has squarely held that, where the question of L.M.R.A. coverage does turn on status, a state court is preempted of jurisdiction to make that determination, and exclusive primary jurisdiction to make the initial decision on the question rests with the administrative agency, the N.L.R.B. *Marine Eng. Ben. Ass'n* v. *Interlake Steamship Co.,* 370 U.S. 173 (1962).

Petitioners respectfully submit that the foregoing cases clearly show that the question of N.L.R.B. jurisdiction over the conduct here involved is an "arguable" one, and that therefore the state court below lacked jurisdiction and the writ of prohibition should have issued.

Another separate, and independent, basis for seeking a writ of certiorari in this case is that an important question of federal labor law is here involved which has not been settled but should be settled to insure uniform application of federal law in this area. The question involved is whether the prohibitions of the Norris-LaGuardia Act, 29 U.S.C. 101 et seq., apply to state courts when such state courts are adjudicating federal labor cases governed and controlled by federal law. It has only been recently that it has become quite clear that federal law has virtually preempted the field of labor litigation throughout the nation. Thus, it has been held that federal law governs suits under Section 301 of Taft-Hartly even though the suit is brought in a state court. *Textile Workers Union* v. *Lincoln Mills of Alabama,* 353 U.S. 448 (1957); *Local No. 174, Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95 (1962); *Charles Dowd Box Co.* v. *Courtney,* 368 U.S. 502 (1962); *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650 (1965). Likewise, suits for damages under Section 303 of Taft-Hartley are governed by federal law. *Teamsters Union* v. *Morton,* 377 U.S. 252, (1964); *United Mine Workers* v. *Gibbs,* U.S. , 16 Law Ed. 2d 812.

Federal law similarly governs labor litigation arising out of Railway Labor Act situations. *Int'l Ass'n of Machinists* v. *Central Airlines,* 372 U.S. 682 (1963).

The holdings in the above cases make it clear that state courts, in adjudicating labor cases, will be primarily if not exclusively occupied with the task of applying federal law, much as a federal court applies state law in a diversity jurisdiction situation. Accordingly, the question of whether the prohibitions of the

Norris-LaGuardia Act will apply to such labor cases being tried in state courts is one that will become of ever increasing importance to the nation's judicial system. This Court noted in the *Charles Dowd Box Co.* v. *Courtney, supra,* that "The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court." 368 U.S. at 514, n. 8. The U. S. Court of Appeals for the Third Circuit has struggled with the problem in a removal context with indecisive results. See *American Dredging Co.* v. *Local No. 25, Marine Div., Int. U. Op. Eng.,* 338 F. 2d 837 (3d Cir. 1964), *cert. denied,* 380 U.S. 935.

In this instant case, petitioners asserted the jurisdictional bar of the Norris-LaGuardia Act in the state trial court (¶ 6 of Answer, Exh. B to Suggestion, App. C hereto). The trial court, however, proceeded to issue injunctive relief in this case which clearly arises out of a labor dispute within the meaning of Norris-LaGuardia, 29 U.S.C. 113.

In the prohibition proceedings in the Florida District Court of Appeal, below, petitioners likewise asserted the bar of Norris-LaGuardia as a basis for the issuance of a writ of prohibition (¶ F of Suggestion, App. C hereto). Accordingly, the question is squarely here presented, and it is respectfully submitted that certiorari should be here granted to decide this important question on the development and administration of federal law under the recent decisions cited above.

CONCLUSION

This Court has noted at frequent occasions the undeniable fact that the issuance of a labor injunction frequently serves to terminate the entire dispute and

render illusory any legal right to review which the enjoined party might have. See *Local No. 438, Construction & Gen. Lab. U.* v. *Curry*, 371 U.S. 542 (1963). Here, both federal and state injunctions, supposedly temporary or preliminary in nature, have been issued against conduct which does not violate any specific command of Congress and which does fall within the category of conduct which Congress has specifically and repeatedly protected and removed from the threat of court injunction (the Clayton Act, 29 U.S.C. 52; the Norris-LaGuardia Act, 29 U.S.C. 101-113). This Court should grant the petition to vindicate and protect federal rights; to correct a glaring conflict between the state court decisions below and this Court's preemption holdings; and to settle the question of the application of Norris-LaGuardia to state court trials of federal law labor cases.

Respectfully submitted,

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Office-Supreme Court, U.S.
FILED
JUN 17 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 244

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, ET AL., *Petitioners,*

v.

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

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APPENDIX A

(Decision Below)

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1966

Case No. I-7

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, *et al., Petitioners,*

-vs-

HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida; and JACKSONVILLE TERMINAL COMPANY, a Florida Corporation, *Respondents.*

Order

Suggestion for writ of prohibition having been considered,

IT IS ORDERED that said suggestion fails to make out a prima facie case upon which Rule Nisi could issue. Said suggestion is hereby denied.

WITNESS the Honorable John S. Rawls, Chief Judge, and Seal of the Court, this 8th day of June, A. D. 1966.

RAYMOND E. RHODES
Clerk

A True Copy

Attest:

GRACE M. PENN
Deputy Clerk First District Court of Appeal, Tallahassee, Florida

APPENDIX B

(Statutes Involved)

1. *The Labor Management Relations Act,* 1947, 29 U.S.C. 141 et seq.

Section 2, 29 U.S.C. 152:

"DEFINITIONS

"SEC. 2. When used in this Act—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term 'representatives' includes any individual or labor organization.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participated and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"(8) The term 'unfair labor practice' means any unfair labor practice listed in section 8.

"(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(10) The term 'National Labor Relations Board' means the National Labor Relations Board provided for in section 3 of this Act.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to

recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"(12) The term 'professional employee' means—

'(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

'(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"(13) In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Section 7, 29 U.S.C. 157:

"SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring member-

ship in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Section 8(b)(4)(B), 29 U.S.C. 158:

"SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

"* * *

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

"* * *

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

"* * *

"Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members

of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution."

Section 8(c), 29 U.S.C. 158(c):

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

2. *The Norris-LaGuardia Act,* 29 U.S.C. 101 et seq.

Section 1, 29 U.S.C. 101:

"SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act."

Section 2, 29 U.S.C. 102:

"SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the court of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his

fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

Section 4, 29 U.S.C. 104:

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person parcipating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 3 of this Act."

Section 5, 29 U.S.C. 105:

"SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 4 of this Act."

Section 13, 29 U.S.C. 113:

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute, if relief is sought against him or it, and if he or it is engaged in

the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

3. *The Clayton Antitrust Act,* 38 Stat. 730, 15 U.S.C. 17, 29 U.S.C. 52:

Section 6, 15 U.S.C. 17:

"SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws."

Section 20, 29 U.S.C. 52:

"SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or

to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularly in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

4. *The Railway Labor Act*, 45 U.S.C. 151 et seq.

Section 1, Definitions, 45 U.S.C. 151:

"SEC. 1. Definitions. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company sleeping-car company carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in

the possession of the business of any such "carrier": *Provided however,* That the term "carrier" shall not include any street, inter-urban, or suburban electric railway, unless such railway is operated as a part of a general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to carrier where delivery is not beyond the tipple, and the operation of equipment or facilities therefor, or any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory, and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees

may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

[Short Title.] This Act may be cited as the "Railway Labor Act."

Section 1a, General Purposes, 45 U.S.C. 151a:

"SEC. 2. General Purposes. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

No.

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, a labor organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a labor organization;

RAY MOORE, an individual;

LOWELL KENNEDY, an individual;

T. C. BOLAND, an individual; and

J. E. EASON, an individual,

Petitioners,

v.

HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida; and

JACKSONVILLE TERMINAL COMPANY, a Florida corporation,

Respondents.

Suggestion for Writ of Prohibition

To the Honorable, the Judges of the District Court of Appeal of Florida, First District:

The Petitioners, BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization; ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, a labor organization; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a labor organization; RAY MOORE, an individual; LOWELL KENNEDY, an individual; T. C. BOLAND, an individual; and J. E. EASON, an individual, respectfully suggest that the Respondent, HONORABLE ROGER J. WAYBRIGHT, as one of the Judges of the Circuit

Court of the Fourth Judicial Circuit, in and for Duval County, Florida, is exceeding his jurisdiction, powers, and authority in a certain proceeding in the said Circuit Court, wherefore Petitioners hereby pray for the issuance by this Court of a Writ of Prohibition directed to the HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, and to the JACKSONVILLE TERMINAL COMPANY, a Florida corporation, the party plaintiff in that certain suit now pending in said Court under the style of *Jacksonville Terminal Co.* v. *Brotherhood of Railroad Trainmen, et al.*, No. 66-2941-E, in which all Petitioners are named defendants, prohibiting said respondent Circuit Judge from exercising jurisdiction over the subject matter of said suit.

1. This petition is presented under and pursuant to Article 5, Section 5, of the Florida Constitution, and Rule 4.5(d) of the Florida Appellate Rules.

2. This petition is accompanied by exhibits showing the nature of the proceedings below, and a supporting brief.

3. This petition is based upon the following grounds:

A. That on the 4th day of May, 1966, your Petitioner, the Brotherhood of Railroad Trainmen (having commenced on April 24, 1966, a lawful strike against the Florida East Coast Railway Company, based upon a major dispute under the Railway Labor Act, 45 U.S.C. § 151 et seq.), established peaceful and orderly picket lines around the premises of the Respondent Jacksonville Terminal Co. (where the Florida East Coast Railway Company regularly carries on its daily business), calling upon fellow railroad employees to cease rendering services to the Florida East Coast Railway Company and to make common cause with them in their major dispute with the Florida East Coast Railway Company. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Florida East Coast Ry. Co.*, 346 F. 2d 673 (5 Cir., 1965).

B. That on the 24th day of May, 1966, the said Jacksonville Terminal Co. filed a sworn complaint against Peti-

tioners in the Circuit Court in and for Duval County, Florida, seeking an injunction and damages against the aforesaid picketing, as appears more fully in the copy of said complaint attached hereto as "Exhibit A" and made a part hereof. The case thus commenced was docketed as Case No. 66-2941-E, *Jacksonville Terminal Co.* v. *Brotherhood of Railroad Trainmen, et al.*

C. That on the 28th and 29th days of May, 1966, evidentiary hearings were held in said case before the Honorable Roger J. Waybright as Judge of said Court. Petitioners objected to said proceedings on the grounds, inter alia, that the Circuit Court of Duval County, Florida, had no jurisdiction to entertain said proceedings for the reason that the action alleged by plaintiff to be illegal was "arguably subject" to the exclusive primary jurisdiction of the National Labor Relations Board under Sections 7 and 8(b)(4)(B) of the National Labor Relations Act, 29 U.S.C. §§ 157, 158(b)(4)(B), and therefore, state court jurisdiction is preempted and the state court has no jurisdiction or power to determine or pass upon the legality vel non of the alleged conduct. *San Diego Building Trades* v. *Garmon* (1959), 359 U.S. 236, 79 S. Ct. 773; *Garner* v. *Teamsters Union* (1953), 346 U.S. 485, 74 S. Ct. 161; *Marine Engineers Beneficial Assn.* v. *Interlake Steamship Co.* (1962), 370 U.S. 173, 82 S. Ct. 1237; *Scherer & Sons, Inc.* v. *International Ladies Garmet Workers,* 142 So. 2d 290 (Fla. 1962).

D. The plaintiff denied that the National Labor Relations Board had "arguable jurisdiction" for two reasons: (1) that as a railroad carrier, it did not have standing to make charges before the National Labor Relations Board, and (2) that defendant labor organizations were not subject to regulation under the National Labor Relations Act. Defendants submitted that as a matter of law, the plaintiff did have a standing to make charges before the National Labor Relations Board [see National Labor Relations Act, Section 8(b)(4)(B), 1959 Amendments, 29 U.S.C. § 158 (b)

(4)(B); *Local Union No. 25* v. *New York, New Haven & Hartford R. Co.* (1956), 350 U.S. 155, 76 S. Ct. 227] and that, *arguably,* defendants were subject to regulation under the National Labor Relations Act [see National Labor Relations Act, Sections 2, 7, 8(b)(4)(B), 29 U.S.C. §§ 152, 157, 158(b)(4)(B); *Marine Engineers Beneficial Association* v. *Interlake Steamship Co.* (1962), 370 U.S. 173, 82 S. Ct. 1237; *International Brotherhood of Electrical Workers* v. *NLRB,* 350 F. 2d 791 (C.A., D.C., 1965), cert. denied, March 21, 1966, 16 L. Ed. 2d 206; *Brotherhood of Locomotive Firemen & Enginemen and Brotherhood of Railroad Trainmen,* and *Phelps Dodge Corporation,* 130 NLRB No. 94, 47 LRRM 1461 (1961)].

E. The jurisdiction of the National Labor Relations Board over the conduct sought to be enjoined by the plaintiff is clearly "arguable" under the above-cited decisions, and therefore, the Circuit Court below had no jurisdiction to enjoin such conduct. *Marine Engineers Beneficial Association* v. *Interlake Steamship Co.* (1962), 370 U.S. 173, 82 S. Ct. 1237.

F. Petitioners further objected to said proceedings upon the ground that the said Court had no jurisdiction to apply state law in this dispute which is fully regulated to the exclusion of state law by substantive federal law. National Labor Relations Act, 29 U.S.C. § 141 et seq.; Railway Labor Act, 45 U.S.C. § 151 et seq.; Clayton Antitrust Act, 38 Stat. 730, 29 U.S.C. § 52, 15 U.S.C. § 17; Norris-LaGuardia Act, 29 U.S.C. § 101 et seq.; *Teamsters Union* v. *Morton* (1964), 377 U.S. 252; *United Mine Workers* v. *Gibbs* (1966), 16 L.Ed 2d 812, 86 S. Ct. 1130; *International Association of Machinists* v. *Central Airlines* (1964), 372 U.S. 682; *Brotherhood of Railroad Trainmen* v. *Chicago R. & I.R. Co.* (1957), 353 U.S. 30.

G. Nevertheless, in usurpation of the jurisdiction of the National Labor Relations Board, and in excess of its own jurisdiction, the Honorable Roger J. Waybright as Judge

of the Circuit Court of Duval County, Florida, on May 30, 1966, entered an Order for Temporary Injunction, a certified copy of which is attached hereto as "Exhibit E", enjoining and restraining Petitioners from picketing the said Terminal Company premises, a course of conduct which is arguably subject to the jurisdiction of the National Labor Relations Board, and is protected, legal activity under federal law.

H. The following exhibits to this Suggestion are attached hereto and incorporated herein by reference:

Exhibit A:
Complaint and affidavits.

Exhibit B:
Answer.

Exhibit C:
Amended Complaint.

Exhibit D:
Order dated May 28, 1966.

Exhibit E:
Order for Temporary Injunction dated May 30, 1966.

Exhibit F:
Defendants' Exhibit 1, which is a sworn complaint filed by Plaintiff against Defendants in the U.S. District Court for the Middle District of Florida on May 4, 1966.

Exhibit G:
Excerpt from Testimony and Transcript of Proceedings held by Circuit Court below on Saturday afternoon, May 28, 1966, pp. 12-13.

I. Your Petitioners further show that the said cause remains pending in the Circuit Court of Duval County, Florida, on the said Order for Temporary Injunction, and your Petitioners aver that the said Circuit Judge is with-

out jurisdiction to hear and render judgment in said cause, but will, if not prohibited by Writ of this Honorable Court, retain said cause and continue said injunction entered without and in excess of the jurisdiction of said Court.

J. Petitioners aver that they have no plain, speedy, and adequate remedy save by the issuance of a Writ of Prohibition by this Honorable Court.

WHEREFORE, Petitioners respectfully pray that this Honorable Court issue an alternative Writ of Prohibition directed to Respondents and requiring them to show cause why the said Writ should not issue as prayed for.

Respectfully submitted,

RUTLEDGE AND MILLEDGE
601 Flagler Federal Building
111 Northeast First Street
Miami, Florida 33132

BECKHAM AND MCALILEY
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130

Attorneys for Petitioners

NEAL RUTLEDGE
Neal Rutledge

ALLAN MILLEDGE
Allan Milledge

HORTON AND SCHWARTZ
308 Concord Building
66 West Flagler Street
Miami, Florida 33130
Of Counsel

Exhibit A

IN THE CIRCUIT COURT, FORTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO. IN CHANCERY.

DIVISION

JACKSONVILLE TERMINAL COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Boland, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. Eason, individually and as an official of said brotherhood; and the members of said organization,

Defendants.

Complaint for Injunction

Comes now Jacksonville Terminal Company, Plaintiff, by and through its undersigned attorneys, and respectfully shows to the Court as follows:

1. Plaintiff is a corporation organized and existing under the Laws of the State of Florida, with its principal place of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at Jacksonville, Florida, where it owns and operates railroad

yards and a railway station that provides such services for the following railroads: Atlantic Coast Line Railroad Company; Seaboard Airline Railroad Company; Florida East Coast Railway Company; and Southern Railway System.

2. The Defendants are an unincorporated labor organization; the defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and generally is in charge of promoting the acts and things hereinafter alleged; other defendants are members of said labor organizations or individuals participating in concert with said organizations in the unlawful acts hereinafter set forth. The members of the above-captioned labor organizations are so numerous as to make it impracticable to bring them all before the Court.

3. This action arises under the Constitution and Laws of the State of Florida.

4. The defendant Brotherhoods are presently on strike against the Florida East Coast Railway Company and in the course of said strike have directed primary and lawful picketing against said railroad at various locations throughout the State of Florida. The plaintiff in 1963 designated a separate entrance in and to its premises for use exclusively by the employees of the Florida East Coast Railway Company.

5. At the present time the plaintiff has collective bargaining contracts with the defendants, Brotherhood of Railroad Trainmen and Order of Railway Conductors and Brakemen. Said collective bargaining contracts are presently in full force and effect and there is no dispute thereunder, major or minor, within the meaning of the Railway Labor Act. None of plaintiff's employees are represented by the defendant, Brotherhood of Locomotive Firemen and Enginemen. None of the defendants named individually above are employees of plaintiff and plaintiff further

alleges that it has no labor dispute with any of the above named defendants and that no labor demands have been made to plaintiff by any of its employees or their respective bargaining agents.

6. On to-wit, May 4, 1966, the defendant Brotherhoods their officers, agents and employees commenced picketing and patrolling the premises of the plaintiff at places other than the entrance designated for use by Florida East Coast Railway employees to the end that plaintiff's premises were completely surrounded. Said pickets identified themselves as members of the defendant, Brotherhood of Railroad Trainmen and carried placards which state that they are on legal strike against the Florida East Coast Railroad. Plaintiff is informed and believes that all three of the defendant Brotherhoods are on strike against the Florida East Coast Railroad Company and further believes that the defendants other than the Brotherhood of Railroad Trainmen, unless hereby enjoined, will continue or commence picketing of plaintiff's premises.

7. As a result of the acts of defendants the employees of plaintiff, Atlantic Coast Line Railroad Company and the Seaboard Airline Railroad Company, none of whom were or are in any wise involved in the dispute between defendants and the Florida East Coast Railway Company, were induced and encouraged thereby to honor said pickets and to refuse to honor their respective work contracts by reporting to work. Plaintiff further alleges that defendants further counseled, advised and persuaded plaintiff's employees to not report to work, even though plaintiff's employees were and are not involved in any dispute with plaintiff regarding their working agreement.

8. As a result of the above and foregoing acts of defendants, plaintiff and other railroads filed an action for injunctive relief and damages in the United States District Court for the Middle District of Florida on May 4, 1966, being case No. 66-357-Civ-J. As a result of said Com-

plaint the Hon. William A. McRae, Jr., United States District Judge issued a Temporary Restraining Order on May 4, 1966, and thereafter, on May 10, 1966, after a full evidenciary hearing, entered a preliminary injunction enjoining the acts of defendants. Thereafter defendants on to-wit, May 18, 1966, applied for and obtained from the United States Court of Appeals for the Fifth Circuit an Order staying the preliminary injunction. Thereafter said Court sitting in Atlanta, Georgia on May 23, 1966, entered its Order dissolving said preliminary injunction effective eleven o'clock A.M. May 24, 1966 on the grounds that the District Court was without jurisdiction. Plaintiff is informed and verily believes that said picketing will be resumed immediately and their presence is eminent unless this Court grants the relief herein sought.

9. During the proceedings before the District Court the defendant, Ray Moore, who identified himself as Deputy Vice President of the defendant, Brotherhood of Railroad Trainmen, testified that the purpose of the alleged picketing was to induce the plaintiff, its officers, agents and employees not to perform services for the Florida East Coast Railway Company.

10. There is no dispute between plaintiff and its employees or between plaintiff and defendants which is subject to the provisions of the Railway Labor Act.

11. The provisions of the National Labor Relations Act as amended, 29 U.S.C.A. § 141 et seq. are not applicable to the instant situation and the same cannot be said to be "arguable" within the meaning and application of said Act in that plaintiff and defendants are expressly excepted therefrom. 29 U.S.C.A. § 152(2)(3).

12. The acts of defendant constitute a secondary boycott of plaintiff's premises, are an illegal and unwarranted interference with the collective bargaining agreements between plaintiff and its employees, are contrary to the public policy, safety and welfare of the State of Florida as

pronounced in the Constitution and Laws of the State of Florida and if permitted to continue will result in immediate and irreparable harm and injury to plaintiff, many industries in the State of Florida and the public at large all of which more particularly appears from the affidavits of Arthur C. Herrington, Alfred G. Johnson and G. G. Jones Cecil Batton, attached hereto and by this reference made a part of this complaint. Many of plaintiff's employees will be deprived of earning their livelihood.

13. Jurisdiction of this matter not being proper in the Federal Courts, this Court has jurisdiction of the subject matter and the parties and is the only forum that can grant plaintiff relief and prevent the great and irreparable damages that will flow with certainty from defendants actions. Plaintiff has no other remedy. Far greater injury will be inflicted on plaintiff and the citizens of the State of Florida by denial of the relief sought herein than can result to the defendants by the granting of said relief prayed for herein.

WHEREFORE, Plaintiff prays:

1. That the Court issue a preliminary injunction made permanent on final hearing, and pending hearing and determination of plaintiff's motion for a preliminary injunction the Court issue a temporary restraining order on the grounds that immediate, irreparable injury, loss and damage will result to plaintiff before notice can be served and a hearing had on said Motion for Preliminary Injunction.

2. That the temporary restraining order, preliminary injunction and permanent injunction enjoin and restrain the defendants individually and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

(a) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description used by the employees of the Plaintiff and other non-striking employers in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by Plaintiff; provided, however, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Floradia, designated for use by Florida East Coast Railway Company employees only.

(b) Causing, compelling or inducing the employees of the Plaintiff or the employees of other non-striking employers who report for work at the Jacksonville Terminal Company to cease performing the duties of their employment.

(c) Interfering with employees of Plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of Plaintiff who refuses a lawful order to perform services for Plaintiff in accordance with any collective bargaining agreement covering said services in, on or about Plaintiff's facilities, or supporting in any way any employee of Plaintiff who refuses to obey a lawful order or request to perform such services

(d) Interfering with the operations of and employment at the Jacksonville Terminal Company by any force, intimidation, violence or threats thereof.

3. That a day certain be fixed upon which defendants are required to show cause, if any they have, why they should not be permanently enjoined from committing the acts herein above complained of.

4. That a copy of this Complaint and the prayed for temporary restraining order be served on defendants in person.

5. That upon a final hearing of this cause, defendants be permanently enjoined from committing the acts herein above complained of.

6. That, on final hearing, Plaintiff may have damages against said defendants or some of them in such amount as the Court may deem to be just, as well as its costs in this action.

7. That Plaintiff have such other and further relief as the Court may deem proper and just.

McCarthy, Adams & Foote

By: _____

801 Atlantic Bank Building
Jacksonville, Florida 32202
Attorneys for Plaintiff

Of Counsel:

Daniel R. Coffman, Jr.
1623 Barnett Bank Building
Jacksonville, Florida 32202

AFFIDAVIT OF CECIL BATTON

State of Florida }
County of Duval }

Before me, an officer duly authorized to administer oaths this day personally appeared Cecil Batton, to me well known, who being by me first duly sworn, deposes and says:

That he is Superintendent of Transportation charged with the responsibility for the movement and switching of trains in the tracks and yards of Jacksonville Terminal Company. The employees in the Transportation Department are clerks, yardmasters, switchmen, conductors, engi-

neers, hostlers, firemen, interlocking towermen and telegraph operators, totaling 174 men in March of 1966, who performed 29,130 man hours of work and earned $91,032.20 wages.

On May 4, 1966 the employees of the Transportation Department observed the picket lines thrown up by F.E.C. Ry. striking employees. The functions of the Transportation Department were performed by retaining men on their jobs who were working when the pickets were stationed. These men can be retained only during the time permitted by the hours of service law. If the work of the Transportation Department is interrupted no passenger, mail or express trains could be operated into or out of the City of Jacksonville and a large percentage of the freight traffic would come to a standstill.

Further affiant sayeth not.

Dated this — day of May, A. D. 1966.

CECIL BATTON
Cecil Batton

Sworn to and subscribed before me
this — day of May, A. D. 1966.

Notary Public, State of Florida
at Large. My commission expires:
May 24, 1968
Bonded by National Surety Corporation

STATE OF FLORIDA }
COUNTY OF DUVAL } ss:

Before me, an officer authorized to administer oaths and take acknowledgements, personally appeared MARSHALL C. JENNETTE, to me well known and who being first duly sworn said on oath that he is the President and General Manager of the plaintiff corporation, Jacksonville Terminal Company; that he has read the above and foregoing allegations contained in the Complaint for injunctive relief and that all matters of fact stated therein are true and correct to his best knowledge and belief.

MARSHALL C. JENNETTE

Sworn to and subscribed before me
this — day of May, 1966,

Notary Public, State of Florida at Large
My Commission expires: _____

AFFIDAVIT OF ARTHUR C. HERRINGTON

Before me an officer authorized to administer oaths, this day personally appeared ARTHUR C. HERRINGTON, to me well known, who, being by me first duly sworn, deposes and says:

That he is Master Mechanic of Jacksonville Terminal Company, and charged with responsibility for the management, direction and operation of the mechanical department of Jacksonville Terminal Company, including inspection, maintenance, and servicing of railroad locomotives of Jacksonville Terminal Company and locomotives and cars of its tenant lines, ACL RR, SAL RR, So. Ry. and FEC Ry., and also the repair thereof and further inspection, maintenance service and repair of machinery, and mechanical equipment used in the operation of the railroad yards and facilities.

The employees in the mechanical department number approximately 215, who worked 40,703 man hours in March of 1966, earning wages for that period in a total of $117,328.33.

The crafts included in the mechanical department include: supervisors, electricians, carmen, sheet metal workers, machinists, helpers, laborers, and clerks, car cleaners, ice and water men.

The mechanical department, among other things, is currently servicing forty-four passenger trains daily, except on Sunday, when there are only forty-two trains. Of these trains, the FEC Ry. operates two trains daily except on Sunday, which are composed of one locomotive unit and two passenger cars, each. These FEC pasesnger cars, for the month of March, constituted .59 of one per cent of the passenger cars handled by Jacksonville Terminal Company during that period of time.

On May 4th when FEC pickets picketed Jacksonville Terminal Company premises, the mechanical department was able to operate only so long as it was able to hold its employees on duty who were working at the time.

Further affiant sayeth not.

Dated this — day of May, A. D. 1966.

ARTHUR C. HERRINGTON
Arthur C. Herrington

Sworn to and subscribed before me
this — day of May, A. D. 1966.

Notary Public, State of Florida
at Large.

My commission expires: May 24, 1968.
Bonded by National Surety Corporation

AFFIDAVIT OF ALFRED G. JOHNSON

STATE OF FLORIDA }
COUNTY OF DUVAL }

Before me, an officer duly authorized to administer oaths this day personally appeared ALFRED G. JOHNSON to me well known, who being by me first duly sworn deposes and says:

That he is Operations Manager of Railway Express Agency, Incorporated, which operates a railway express terminal in the City of Jacksonville on land which it leases from Jacksonville Terminal Company, and which is adjacent to the yards and track facilities of said Jacksonville Terminal Company, and said express terminal of REA does not have a rail connection with the interstate rail carriers except by the rails and tracks of said Jacksonville Terminal Company.

Ralway Express Agency, Incorporated has approximately 300 employees who worked 59,878 man hours in the month of March, 1966;

The actual volume of shipments of express during said period of time both in and out and for the whole State of Florida was 2,218,992 pieces; and all of such express shipments were of necessity handled through its Jacksonville office and the facilities of Jacksonville Terminal Company.

All of the express business aforesaid was handled by REA for the account of ACL RR Co. and SAL RR Co. No express business was handled by REA for either F.E.C. Ry. Co. or So. Ry. system.

The volume of express matter handled by REA is largely perishable goods, such as ferns, flowers, fish and fruit; the delay in the handling of which would result in great loss to the value of such express matter.

During the time the premises of Jacksonville Terminal Company were picketed by striking employees of F.E.C.

Ry. Co. on or about May 4th delivery of express cars was delayed as follows:

six cars from ACL #375,
two cars from ACL #95,
one car from SAL #38,
one car from SAL #36,
three cars from ACL #76, and
three cars from ACL #38;

the daily average of railway express cars handled by REA is 64 cars, all of which must be delivered to and taken away from the express terminal of REA over the tracks and yards and by the employees of Jacksonville Terminal Company.

An interruption of the flow of express business into and out of the Jacksonville express terminal would result in irreparable injury and damage to REA and to its shipping customers.

Further affiant sayeth not.

Dated this 9th day of May, A. D. 1966.

ALFRED G. JOHNSON
Alfred G. Johnson

Sworn to and subscribed before me
this 9th day of May, A. D. 1966.

(signature illegible)

Notary Public, State of Florida at Large.
My Commission expires May 24, 1968
Bonded by National Surety Corporation

AFFIDAVIT OF G. G. JONES

STATE OF FLORIDA }
COUNTY OF DUVAL }

Before me, an officer duly authorized to administer oaths, this day personally appeared G. G. JONES, to me well known, who being by me first duly sworn, deposes and says:

That he is General Baggage and Mail Agent for Jacksonville Terminal Company responsible for receiving, loading and unloading, sorting, classifying, directing and handling United States mail and baggage, including remains of deceased persons, for all of the passenger, mail and express trains that arrive at and depart from the City of Jacksonville. This department employs approximately 225 people, including supervisors, tractor drivers, separators, loaders and porters. For the month of March 1966 these employees worked 37,141 man hours and earned $100,476.00 in wages. During the month of March this department handled 1,930,614 sacks of U. S. mail. This constitutes about 95% of all U. S. mail coming into or going out of the State of Florida, or within Duval County.

Included in baggage for the month of January 1966, (the only month in which this statistic was separated) were 569 remains of deceased persons; and 32,089 pieces of checked baggage; there was no other baggage handled of which a direct record was made by affiant.

During the May 4th 1966 picketing of Jacksonville Terminal Company premises by striking employees of F.E.C. Ry. Co. the employees of the Baggage and Mail Department refused to cross the picket lines and in due time the work in the department would ultimately have broken down completely.

A part of the mail handling above referred to, is performed for the U. S. Post Office Department, and not for the terminal Company's tenant lines, this is mail which Jacksonville Terminal Company's employees load or un-

load from trucks because of the lack of post office facilities for handling this business. This work for March 1966 amounted to an average of 23,241 sacks per day or 720,471 for the month.

No mail or baggage is handled for the F.E.C. Ry. Co.

The operation of the Baggage and Mail Department operates twenty hours each day. In the event of an interruption of service mail would accumulate that could not be handled, delivered or dispatched. It would probably require six days to recover or dispose of the mail which would accumulate in one day's interruption. In addition to the difficulty of working accumulated mail, there would be a problem of coordinating and adjusting the electronically controlled mail handling equipment.

Further affiant sayeth not.

Dated this 9th day of May, A. D. 1966.

G. G. JONES
G. G. Jones

Sworn to and subscribed before me
this 9th day of May, A. D. 1966.

(signature illegible)

Notary Public, State of Florida at Large.
My commission expires May 24, 1968
Bonded by National Surety Corporation

Exhibit B

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE No. 66-2941-E

DIVISION B

JACKSONVILLE TERMINAL COMPANY, a corporation,
Plaintiff,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, et al. *Defendants*.

Answer

Comes now the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, and Brotherhood of Locomotive Firemen and Enginemen, and for answer to the complaint say:

1. Defendants admit the allegations of paragraph 1 of the complaint.

2. Defendants admit that they are railway labor organizations, national in scope, that Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and deny the remaining allegations not herein specifically admitted.

3. The defendants deny the allegations of paragraph 3, the plaintiff itself having asserted in the United States District Court, the Court of Appeals for the Fifth Circuit and the Supreme Court of the United States that the Federal courts have exclusive jurisdiction over the subject matter of this dispute.

4. The defendant labor organizations admit that they have a so-called major dispute with the Florida East Coast Railway Company and they have directed lawful picketing including the premises of the plaintiff, in con-

nection with that dispute and deny the remaining allegations not herein admitted.

5. Defendants admit that the Brotherhood of Railroad Trainmen and Order of Railway Conductors have working agreements with the plaintiff and the Brotherhood of Locomotive Firemen and Enginemen have no working agreement with the plaintiff. The defendants deny the remaining allegations of paragraph five.

6. Defendant Brotherhood of Railroad Trainmen admits that its members picketed certain locations at the property of the plaintiff commencing at or about 3:05 a.m. on May 4, 1966 and the defendants Order of Railway Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen deny that they or any of their members picketed certain locations around the property of the plaintiff. The defendants further admit that they are on legal strike against the Florida East Coast Railway and have the right under federal law to resume peaceful picketing at locations including those previously picketed at or near the property of the plaintiff. The defendants deny those allegations of paragraph 6 not herein specifically admitted.

7. Defendants admit that the railroad employees of the Atlantic Coast Line Railroad, and Seaboard Air Line Railroad Company, exercised their right under federal law to honor the picket lines of the defendant Brotherhood of Railway Trainmen and the defendants deny those allegations in paragraph 7 of the complaint not herein specifically admitted.

Further answering the allegations of paragraph 7, defendants say that the plaintiff and its employees are involved in the dispute between the Florida East Coast Railway Company and its employees; that Florida East Coast Railway Company daily runs its trains with striker replacement crews upon the premises of the plaintiff,

that plaintiff and its employees render day-to-day services to the Florida East Coast Railway which are essential to its operations, that the facilities of the plaintiff and the services of its employees are an integral part of Florida East Coast Railway operations. Further defendants allege that the plaintiff has made common cause with Florida East Coast Railway Company by assisting its operations during a strike, and that plaintiff's employees desire to, and have the right under applicable federal law, to make common cause with the striking employees of Florida East Coast Railway Company by refusing to render services for Florida East Coast Railway Company. See *Brotherhood of Locomotive Firemen and Enginemen vs. Florida East Coast Railway Co.*, 346 F. 2d 673 (5th Cir. 1965).

8. Defendants admit that an almost identical action was instituted by the plaintiff and others in the United States District Court for the Middle District of Florida, Case No. 66-357-Civ-J and subsequent allegations concerning the above specified litigation, the plaintiff alleging exclusive federal jurisdiction over the subject matter of the litigation and the Court of Appeals for the Fifth Circuit concluding that it was without jurisdiction *to enter* an injunction.

9. Defendants admit that defendant Ray Moore is a Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and deny the remainder of paragraph 9 insofar as it pertains to the testimony of defendant Ray Moore.

10. Defendants deny the allegations of paragraph 10 of the complaint and allege that the plaintiff's employees are part of the major dispute existing between defendants and the Florida East Coast Railway Company.

11. Defendants deny the allegations of paragraph 11, 12 and 13 of the plaintiff's complaint and deny all allegations of plaintiff's complaint not specifically admitted by the defendants.

FIRST DEFENSE

The complaint fails to state a cause of action.

SECOND DEFENSE

The plaintiff and the Florida East Coast Railway Company are common carriers engaged in interstate commerce, and are subject to the Interstate Commerce Act (49 USC § 1, et seq.). Both are subject to the Railway Labor Act, 45 USC § 151, et seq.

The plaintiff's business, the defendants' conduct, and the relationship between the parties all involve interstate commerce, all are regulated by acts of the United States Congress, and all involve areas of jurisprudence preempted by federal legislation in which state regulation can play no part (with the one exception of violence, not here alleged). *See* for instance: *San Diego Council* v. *Garmon,* 359 US 236, 79 S. Ct. 773 (1959); *Teamsters Union* v. *Morton,* 377 U.S. 252, 12 L.Ed. 2d 280 (1965); *United Mine Workers* v. *Gibbs,* 16 L.Ed. 2d 218 (1966).

THIRD DEFENSE

The defendants and the Florida East Coast Railway Company are engaged in a "major dispute" under the terms of the Railway Labor Act, 45 USC § 151, et seq. involving unilateral changes by Florida East Coast Railway in rules, rates of pay and working conditions. The procedures of the Railway Labor Act have been exhausted and the parties are entitled to resort to "self-help" (*BLE* v. *B & O,* 372 US 284 (1963)) to the extent permitted and within the limitations of federal law.

FOURTH DEFENSE

It has been judicially determined in litigation between the parties to this cause that the conduct of defendants here involved "arises out of a labor dispute" within the

meaning of applicable federal law, and plaintiff is estopped to assert to the contrary in this cause. *Atlantic Coast Line Railroad Company, et al. vs. Brotherhood of Railroad Trainmen, et al.*, Case No. 23659, United States Court of Appeals For The Fifth Circuit, decided May 24, 1966.

FIFTH DEFENSE

The conduct of the defendants is legal conduct under applicable federal law.

(a) The employees of connecting carriers have a right under federal law to refuse to render service to a struck carrier, to participate in and become a part of the major dispute with the struck carrier, and may make common cause with their brother employees on the struck carrier. *BLF&E vs. FEC*, 346 F. 2d 673.

(b) Even if the conduct in question might constitute a "secondary boycott", such conduct is not prohibited conduct under the Railway Labor Act. *I.B.E.W. vs. N.L.R.B.*, 350 F. 2d 791 (D.C. Cir. 1965).

(c) If defendants' conduct is subject to regulation under the National Labor Relations Act, rather than the Railway Labor Act, it does not constitute illegal conduct under either act. It is lawful and proper for the striking employees of Florida East Coast Railway to make a peaceful and orderly appeal "to neutral employees whose tasks aid the employer's everyday operations", *Local 761, I.U. of E.R. & M Workers vs. N.L.R.B.*, 366 U.S. 667, or to persons who are "contributing to the operations which the strike is endeavoring to halt" by furnishing "day-to-day service essential to the employer's regular operations", *United Steelworkers* v. *N.L.R.B.*, 376 U.S. 492.

Fifth Defense

State courts are preempted from determining, even under applicable federal law, whether or not the conduct in question is legal or illegal conduct. *Local Union No. 25* v. *New York, New Haven and Hartford Railroad Co.* (1956) 350 U.S. 155, 76 S. Ct. 227; *San Diego Council* v. *Garmon,* 359 U.S. 236; *Scherer & Sons, Inc.* v. *International Ladies Garmet Workers Union,* 142 So. 2d 290, 1962; *United Steelworkers* v. *Nubar Tool and Eng. Co.* 148 So. 2d 45 (2nd Dist. 1962); *Local 675, Operating Engineers* v. *Meekings,* 175 So. 2d 59 (2nd Dist. 1965). Cf., *Manion, et al.* v. *Kansas City Terminal Railway Co.* (1957) 353 U.S. 927, reversing state court injunction reported at 297 S.W. 2d 31.

Sixth Defense

The provisions of the Norris-LaGuardia Act, 29 USC § 101, et seq. are applicable to deprive this court of jurisdiction to enter an injunction in this case.

Seventh Defense

The conduct of the defendants is protected by the First Amendment and Fourteenth Amendment of the United States Constitution. *Thornhill* v. *State of Alabama,* (1940) 310 U.S. 88, 60 S. Ct. 879.

Eighth Defense

The conduct of the defendants would not constitute an illegal secondary boycott under Florida law, even if said law applied to this case.

WHEREFORE, defendants respectfully pray that this Court dismiss the plaintiff's complaint for an injunction and damages, with prejudice.

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Of Counsel

Exhibit C

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA, IN CHANCERY

DIVISION B

No. 66-2941-E

JACKSONVILLE TERMINAL COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, A. L. GRAVES and C. H. WRIGHT, *et al.*, Defendants.

Amended Complaint for Injunction

Comes now Jacksonville Terminal Company, Plaintiff, by and through its undersigned attorneys, and respectfully shows to the Court as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at Jacksonville, Florida, where it owns and operates railroad yards and a railway station that provides such services for the following railroads: Atlantic Coast Line Railroad Company; Seaboard Airline Railroad Company; Florida East Coast Railway Company; and Southern Railway System.

2. The Defendants are an unincorporated labor organization; the defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and generally is in charge of promoting the acts and things hereinafter alleged, other defendants are members of said labor organizations or individuals participating in concert with said organizations in the unlawful acts hereinafter set

forth. The members of the above-captioned labor organizations are so numerous as to make it impracticable to bring them all before the Court.

3. This action arises under the Constitution and Laws of the State of Florida.

4. The defendant Brotherhoods are presently on strike against the Florida East Coast Railway Company and in the course of said strike have directed primary and lawful picketing against said railroad at various locations throughout the State of Florida. The plaintiff in 1963 designated a separate entrance in and to its premises for use exclusively by the employees of the Florida East Coast Railway Company.

5. At the present time the plaintiff has collective bargaining contracts with the defendants, Brotherhood of Railroad Trainmen and Order of Railway Conductors and Brakemen. Said collective bargaining contracts are presently in full force and effect and there is no dispute thereunder, major or minor, within the meaning of the Railway Labor Act. None of plaintiff's employees are represented by the defendant, Brotherhood of Locomotive Firemen and Enginemen. None of the defendants named individually above are employees of plaintiff and plaintiff further alleges that it has no labor dispute with any of the above named defendants and that no labor demands have been made to plaintiff by any of its employees or their respective bargaining agents.

6. On to-wit, May 4, 1966, the defendant Brotherhoods, their officers, agents and employees commenced picketing and patrolling the premises of the plaintiff at places other than the entrance designated for use by Florida East Coast Railway employees to the end that plaintiff's premises were completely surrounded. The defendants and their agents, officers and employees have coerced and threatened with physical injury and property damage employees of

plaintiff for the purpose of intimidating said employees into refusing to perform the duties of their employment. Said pickets identified themselves as members of the defendant, Brotherhood of Railroad Trainmen and carried placards which state that they are on legal strike against the Florida East Coast Railroad. Plaintiff is informed and believes that all three of the defendant Brotherhoods are on strike against the Florida East Coast Railroad Company and further believes that the defendants other than the Brotherhood of Railroad Trainmen, unless hereby enjoined, will continue or commence picketing of plaintiff's premises.

7. As a result of the acts of defendants the employees of plaintiff, Atlantic Coast Line Railroad Company and the Seaboard Airline Railroad Company, none of whom were or are in any wise involved in the dispute between defendants and the Florida East Coast Railway Company, were induced, encouraged and intimidated thereby to honor said pickets and to refuse to honor their respective work contracts by reporting to work. Plaintiff further alleges that defendants further counseled, advised and persuaded plaintiff's employees to not report to work, even though plaintiff's employees were and are not involved in any dispute with plaintiff regarding their working agreement.

8. As a result of the above and foregoing acts of defendants, plaintiff and other railroads filed an action for injunctive relief and damages in the United States District Court for the Middle District of Florida on May 4, 1966, being case No. 66-357-Civ-J. As a result of said Complaint the Hon. William A. McRae, Jr., United States District Judge issued a Temporary Restraining Order on May 4, 1966, and thereafter, on May 10, 1966, after a full evidentiary hearing, entered a preliminary injunction enjoining the acts of defendants. Thereafter defendants on to-wit, May 18, 1966, applied for and obtained from the United States Court of Appeals for the Fifth Circuit an

Order staying the preliminary injunction. Thereafter said Court sitting in Atlanta, Georgia on May 23, 1966, entered its Order dissolving said preliminary injunction effective eleven o'clock A.M., May 24, 1966, on the grounds that the District Court was without jurisdiction. Plaintiff is informed and verily believes that said picketing will be resumed immediately and their presence is imminent unless this Court grants the relief herein sought.

9. On numerous occasions agents of defendants have stated that the avowed object of said picketing is to force plaintiff to cease furnishing services that are essential to the interchange of freight and passenger traffic with the Florida East Coast Railway Company. Agents of defendants have stated that, if the plaintiff does embargo traffic to and from the Florida East Coast Railway Company, the picketing will not be resumed. For plaintiff to so embargo such traffic would violate the laws of the State of Florida.

10. There is no dispute between plaintiff and its employees or between plaintiff and defendants which is subject to the provisions of the Railway Labor Act.

11. The provisions of the National Labor Relations Act as amended, 29 U.S.C.A. Sec. 141 et seq. are not applicable to the instant situation and the same cannot be said to be "arguably" within the meaning and application of said Act in that plaintiff and defendants are expressly excepted therefrom. 29 U.S.C.A. Sec. 152(2)(3).

12. The said acts of defendant, if resumed, will:

(a) constitute an illegal secondary boycott of plaintiff's premises;

(b) are an illegal and unwarranted interference with the business and contractual relationships of plaintiff;

(c) threaten to unjustifiably restrain plaintiff from carrying on its business operations;

(d) force plaintiff to violate its statutory duties to furnish transportation services under the laws of the State of Florida and are contrary to the public policy, safety and welfare of the State of Florida as pronounced in the Constitution and laws of the State of Florida;

(e) constitute unlawful restrictions on trade and commerce under the laws of the State of Florida;

(f) will result in the taking of plaintiff's property without due process of law in violation of the Constitution and laws of the State of Florida.

(g) constitute a breach of the peace and an illegal interference with the rights of plaintiff's employees to earn a living.

13. If the threatened picketing is renewed, the plaintiff, its employees, many industries in the State of Florida and the public at large will suffer immediate and irreparable harm all of which appears from the affidavits of Arthur C. Herrington, Alfred G. Johnson, G. G. Jones, and Cecil Batton, attached to the original complaint and by this reference made a part of this complaint.

14. Jurisdiction of this matter not being proper in the Federal Courts, this Court has jurisdiction of the subject matter and the parties and is the only forum that can grant plaintiff relief and prevent the great and irreparable damages that will flow with certainty from defendants actions. Plaintiff has no other remedy. Far greater injury will be inflicted on plaintiff and the citizens of the State of Florida by denial of the relief sought herein than can result to the defendants by the granting of said relief prayed for herein.

WHEREFORE, Plaintiff prays:

1. That the Court issue a preliminary injunction made permanent on final hearing, and pending hearing and determination of plaintiff's motion for a preliminary injunc-

tion the Court issue a temporary restraining order on the grounds that immediate, irreparable injury, loss and damage will result to plaintiff before notice can be served and a hearing had on said Motion for Preliminary Injunction.

2. That the temporary restraining order, preliminary injunction and permanent injunction enjoin and restrain the defendants individually and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

(a) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description, used by the employees of the Plaintiff and other non-striking employers in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by Plaintiff; provided, however, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by Florida East Coast Railway Company employees only.

(b) Causing, compelling or inducing the employees of the Plaintiff or the employees of other non-striking employers who report for work at the Jacksonville Terminal Company to cease performing the duties of their employment.

(c) Interfering with employees of Plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of Plaintiff who refuses a lawful order to perform services for Plaintiff in accordance with any collective bargaining agreement covering said services in, on or about Plaintiff's facilities,

or supporting in any way any employee of Plaintiff who refuses to obey a lawful order or request to perform such services.

(d) Interfering with the operations of and employment at the Jacksonville Terminal Company by any force, intimidation, violence or threats thereof.

3. That a day certain be fixed upon which defendants are required to show cause, if any they have, why they should not be permanently enjoined from committing the acts herein above complained of.

4. That a copy of this Complaint and the prayed for temporary restraining order be served on defendants in person.

5. That upon a final hearing of this cause, defendants be permanently enjoined from committing the acts herein above complained of.

6. That, on final hearing, Plaintiff may have damages against said defendants or some of them in such amount as the Court may deem to be just, as well as its costs in this action.

7. That Plaintiff have such other and further relief as the Court may deem proper and just.

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Attorneys for Plaintiff

Of Counsel:
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Exhibit D

IN THE CIRCUIT COURT OF DUVAL COUNTY, FLORIDA

DIVISION B

No. 66-2941-E

JACKSONVILLE TERMINAL COMPANY, a corporation,
Plaintiff(s),

v.

BROTHERHOOD OF RAILROAD TRAINMEN, *etc., et al.,*
Defendant(s).

Order

After due notice by or to all parties affected, a hearing was held before the court with respect to the matters disposed of by this order.

Upon consideration, it is ORDERED that:

1. The plaintiff has leave to file the amended complaint file-marked by the clerk May 27, 1966, joining as additional defendants A. L. Groves and C. H. Wright (in addition to all the defendants named in the caption of the original complaint). That amended complaint is deemed filed with leave of court as of May 27, 1966.

2. The answer file-marked by the clerk May 27, 1966, is deemed the answer of all defendants except A. L. Groves and C. H. Wright to that amended complaint, any allegations made in that amended complaint that were not made in the original complaint being deemed denied by those defendants.

Jacksonville, Florida, May 28, 1966.

(s) ROGER J. WAYBRIGHT
Judge

Copies: Adam G. Adams II
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Thomas W. McAliley, 1010 Concord Building,
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Exhibit E

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA, IN CHANCERY

DIVISION B

No. 66-2941-E

JACKSONVILLE TERMINAL COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Boland, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. Eason, individually and as an official of said brotherhood; and the members of said organization;

A. L. GRAVES; C. H. WRIGHT, *Defendants*.

Order for Temporary Injunction

This cause being heard on due notice upon plaintiff's application for a temporary injunction, and the Court having considered the affidavits attached to the original Complaint and having heard oral evidence in open court, and having heard oral argument from all counsel, the Court makes the following findings of fact and reaches the following conclusions of law:

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida, with its principal place

of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at Jacksonville, Florida, where it owns and operates as a common carrier with railroad yards and a railway station that provides services for various railroads and Duval County, Florida, industries.

2. The defendants are unincorporated labor organizations; the defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and generally is in charge of promoting the acts and things hereinafter enjoined; other defendants are members of said labor organizations or individuals participating in concert with said organizations in the unlawful acts hereinafter enjoined.

3. This action arises under the Constitution and laws of the State of Florida and this Court has jurisdiction of the subject matter and of the parties.

4. On May 4, 1966, at or about 4:00 o'clock a.m., the defendant Brotherhood of Railroad Trainmen caused picket lines to be put up around the premises of plaintiff, Jacksonville Terminal Company ("Terminal Company") at numerous locations surrounding said premises. Said pickets patrolled at all entrances and exits by rail, foot or vehicle and resulted in a substantial cessation of the activities and business by Jacksonville Terminal Company and caused the employees of said Terminal Company to fail to report to work. All defendants have announced their intention to cause such picketing and patrolling of the premises of plaintiff to be renewed unless this temporary injunction issue.

5. Counsel for defendants announced at the beginning of taking of evidence in this case and the Court finds that if the picketing were resumed, it would result in a virtual cessation of activities not only of the Terminal Company but also of numerous industries in Duval County and throughout the remainder of the State of Florida. The picketing, if resumed, would adversely affect all of the

people who are served by and do business with plaintiff and all railways served by the plaintiff. It would, further, adversely affect an entire economic area, from Duval County to Key West, Florida, and would cause economic strangulation of the entire state. The avowed purpose of the picketing is to cause the plaintiff and its employees to cease furnishing services to the Florida East Coast Railway Company, against whom the defendant Brotherhoods are now on strike and, thus, to bring the operations of the F.E.C. to a halt; the effect of the picketing is considerably more broad, as above stated.

6. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

7. The Court concludes that the past and threatened picketing as described above is in violation of the law of the State of Florida and that this Court has the jurisdiction to enjoin the threatened picketing on that basis. The past and threatened picketing did and will constitute economic pressure in the nature of a secondary boycott which is illegal under Florida law. Further, the picketing seeks to force the plaintiff to violate its duties and obligations as a carrier under the Florida Transportation Act, F.S. § 351.12, 351.14, 351.15, 351.16, 351.17 and 351.19, and seeks to coerce plaintiff into agreeing to embargo the FEC in violation of the Restraint of Trade Laws of this State. Chapter 542, Florida Statutes. Finally, the past and threatened picketing did and will unjustifiably interfere with and interrupt plaintiff's constitutional right to carry on its business, and said picketing constitutes the independent tort of unjustifiable interference with the contractual relationships between plaintiff and its shippers and between plaintiff and its employees. Plaintiff has been and will be subjected to irreparable injury for which no adequate remedy at law exists. It is, therefore,

ORDERED AND DECREED that the defendants, Brotherhood of Railroad Trainmen, Ray Moore, Lowell Kennedy, Order

of Railway Conductors and Brakemen, T. C. Boland, Brotherhood of Locotomotive Firemen and Enginemen, and J. E. Eason, individually, and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with either the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, or the Brotherhood of Locomotive Firemen and Enginemen, and all persons receiving notice of any such orders of the Court, are temporarily enjoined and restrained from:

(a) Picketing the properties owned or operated by plaintiff in Jacksonville, Duval County, Florida, except at the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees.

(b) Causing, directing, authorizing, recommending, sanctioning, or participating in the patrolling, picketing, or blockading of the entrances or exits used by the employees of plaintiff in connection with their work or in connection with plaintiff's land, buildings, facilities or other property operated, owned, or controlled by plantiff; provided, however, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(c) Causing or inducing the employees of plaintiff who report for work at the Terminal Company to cease performing the duties of their employment;

(d) Interfering in any way with the operation of plaintiff's properties by plaintiff.

This temporary injunction shall become effective upon the filing by plaintiff and acceptance by the Clerk of this Court of a good and sufficient bond in favor of defendants in the amount of $25,000.00.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 30th day of May, 1966.

/s/ ROGER J. WAYBRIGHT
Circuit Judge

Exhibit F

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

No. 66-357-Civ.-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, *Plaintiffs*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Boland, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. Eason, individually and as an official of said brotherhood; and the members of said organization, *Defendants*.

Complaint

1. This Court has jurisdiction of this suit because this is an action arising under the Constitution and laws of the United States regulating interstate commerce, and the amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs. The jurisdiction of this Court is specifically invoked under Sections 1331 and 1337 of the Judicial Code (28 U.S.C. Sections 1331 and 1337), the Interstate Commerce Act (49 U.S.C. Section 1, et seq.) and Rule 23(a) of the Federal Rules of Civil Procedure.

2. Plaintiff Atlantic Coast Line Railroad Company (hereinafter called "Coast Line") is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Plaintiff Seaboard Air Line Railroad Company (hereinafter called "Seaboard") is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Jacksonville Terminal Company (hereinafter called Terminal Company) is a railroad corporation organized and existing under the laws of the State of Florida and operates and maintains a railroad terminal, yards and passenger station in the City of Jacksonville, Duval County, Florida, and, as a common carrier, is likewise subject to the Interstate Commerce Act. Plaintiffs, Coast Line and Seaboard, hold themselves out, and are required by law, to provide common carrier transportation service to the public in accordance with their respective tariffs, schedules, etc., on file with the Interstate Commerce Commission and the Florida Public Utilities Commission. Said Plaintiffs collectively operate in many states and together with other railroads provide regular and extensive service between points in Florida and the rest of the United States and adjacent foreign countries and handle extensive freight, passengers, mail and express traffic between many points requiring joint service to and from the State of Florida over the facilities of the Jacksonville Terminal Company, a Florida corporation.

3. Plaintiffs, Coast Line and Seaboard, as common carriers, serve various communities, industries, and plants by furnishing to said communities, industries and plants the supplies and materials vital for their existence through freight, including perishables, passenger and mail service. Plaintiff Terminal Companies' facility is operated in order to effect and is essential to the physical interchange of railroad business between the *Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company* and various other railroads, who, collectively, operate in many

states, and together with other railroads provide regular and extensive service between points in Florida and the rest of the United States, and handle extensive freight, passenger, mail and express traffic between many points requiring joint service through the State of Florida by way of the plaintiff Terminal Company. Said operation of the Terminal Company facility is governed by an Operating and Guaranty Agreement by and between the foregoing and various other railroads which was approved and authorized by the Interstate Commerce Commission on or about November 19, 1947. Plaintiffs allege that the interruption of their operation will be in violation of their constitutional and property rights. Plaintiffs will be unable to handle the daily shipments of U. S. mail, baggage, express, fruits, fresh vegetables, citrus fruits and other food and other articles of commerce, as well as passenger service. Such interruption will create irreparable damage not only to plaintiffs but to the United States Government and countless businesses, industries, individuals and said operating railroads. The interruption of plaintiffs' facilities and operations will be contrary to the purpose and requirements of The Interstate Commerce Act, 49 USC Sections 1(4) and 1(11), and comparable provisions of the Florida Statutes and will prevent plaintiffs from fulfilling their common carrier obligations to the public. The failure to provide common carrier services required by law by subject plaintiffs to damages, fines and penalties.

4. Defendants are unincorporated labor organizations and other defendants are either members of said labor organizations holding the offices captioned above or individuals participating in concert with said organizations in the unlawful acts hereinafter set forth. The members of the above captioned labor organizations are so numerous as to make it impracticable to bring them all before the Court.

5. The defendants are employed or were formerly employed by the Florida East Coast Railway Company and

are engaging in a dispute with the Florida East Coast Railway Company. Neither plaintiff nor any of its employees are involved in said dispute. The defendant brotherhoods are on strike against the Florida East Coast Railway Company, and in the course of said strike are picketing against said railroad at various locations in the State of Florida.

6. On May 4, 1966, at or about 3:00 A.M., the defendant brotherhoods, their officers, agents, representatives and members and others herein named defendants commenced picketing the premises of the plaintiff, Jacksonville Terminal Company, at places other than the entrance designated for entrance for Florida East Coast Railway employees only, and that as a result thereof plaintiff's employees, who are not in any way involved in said dispute, have been induced thereby to refuse and have refused to report for duty as employees of plaintiff and have refused to perform services for plaintiff. Said defendants have also commenced picketing at various places which are under the sole control and operation of the Coast Line and Seaboard. There is no justification for the defendant to picket at any other place than those designated for the entrance of Florida East Coast Railway employees only, as the said Florida East Coast Railway Company has substantial facilities in St. Augustine, Florida, as well as throughout the State of Florida, and the defendants can convey their message to the proper interested persons without disturbing operations of plaintiff's railroad terminal yard and passenger station.

7. The unlawful work stoppage, slowdown and interruption of the plaintiff railroads resulting from the acts of defendants as above alleged unless restrained or enjoined by this Court, will interfere with the movement of passengers, mail, freight and express lading, including products of industry and food and other lading essential to the public health and safety in interstate and intrastate

over the Coast Line and Seaboard lines and the Terminal Company connecting lines of railroad, contrary to the public interest and national welfare. If said unlawful acts continue, they will obstruct, hinder, and delay the interstate commerce over railroads and connecting lines. Such unlawful acts, if continued, will also cause irreparable damage to plaintiffs in the following particulars: substantial monetary amounts in direct wage costs, losses from using supervisory personnel to perform the aforesaid duties unlawfully refused by defendants, and revenue losses arising from plaintiffs being prevented from adequately servicing businesses and industries.

8. The Norris-LaGuardia Act (29 USC § 101, *et seq.*) does not apply. There is no labor dispute here involved in this case between the plaintiffs and defendants, nor do plaintiffs and defendants stand in a relation of employer and employee. Plaintiffs are not involved in any dispute with the defendants. Any claim that the actions of the defendants constitute merely "patrolling" within the meaning of 29 USC Section 104 is a pretense or a method of involving fraud within the meaning of said statute. Defendants' purpose and plan is not simply to advise the public of their dispute with Florida East Coast Railway Company but rather to prevent effectively the use of Terminal Companies' facility by plaintiffs and their respective employees in the pursuit of plaintiffs' respective businesses.

9. Plaintiff alleges that unless a temporary restraining order and injunction is issued as prayed herein, immediate, substantial, and irreparable injury will result in and to the property and business of plaintiff, and to the traveling and shipping public that they are required by law to serve. Plaintiffs have no plain speedy or adequate remedy at law. Plaintiff is informed and believes that the aforementioned illegal actions of the defendants will be continued unless the relief prayed for is granted. Far greater

injury will be inflicted on the plaintiff by denial of the relief sought than can result to the defendants by the granting of said relief.

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court issue a preliminary injunction made permanent on final hearing, and pending hearing and determination of plaintiff's motion for a perliminary injunction the Court issue a temporary restraining order on the grounds that immediate, irreparable injury, loss and damage will result to plaintiffs before notice can be served and a hearing had on said Motion for Preliminary Injunction, all as more fully appears from this verified complaint and the affidavits of Philip J. Lee, M. C. Jennette and W. E. Satterwhite, attached to the Motion for Preliminary Injunction filed herewith.

2. That the temporary restraining order, preliminary injunction and permanent injunction enjoin and restrain the defendants individually and as officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

(a) ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description, used by the employees of the plaintiffs in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by plaintiffs.

(b) causing, compelling or inducing the employees of the plaintiffs to cease performing the duties of their employment in connection with the operation of the various plaintiffs particularly with respect to the transportation of passengers or to the receiving, transportation and handling of goods of any shipper, receiver or common

carrier, or causing, compelling or inducing the plaintiffs, or its employees or representatives to fail to provide facilities for the transportation of property belonging to any shipper, receiver, or common carrier, or to fail to carry, transmit or deliver the United States mail, or to fail to provide transportation for passengers, or causing, compelling or inducing the plaintiff or its employees to fail to perform their obligations as required by law;

(c) causing, compelling and inducing the plaintiffs, or its employees or representatives, to fail to perform any of their lawful duties, including the operating of locomotives, cars, or trains, or to interfere in any way with the delivery, loading, unloading, dispatch or movement of any of plaintiffs' rolling stock, engines, cars, equipment or trains or any of the contents or any of the passengers thereof;

(d) interfering with employees of plaintiffs in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiffs who refuse a lawful order to perform services for plaintiffs in accordance with any collective bargaining agreement covering said services in, on or about plaintiffs' facilities, or supporting in any way any employee of plaintiffs who refuses to obey a lawful order or request to perform such services.

3. That the Court enter a mandatory injunction requiring the defendants or any of them, until further order of the Court, to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiffs' employees not to render service in connection with the operation of the various plaintiffs.

4. That, on final hearing, plaintiffs may have damages against said defendants or some of them in such amount

as the Court may be to be just, as well as their costs in this action.

5. That the plaintiffs have such other and further relief as the Court may deem proper.

ATLANTIC COAST LINE RAILROAD COMPANY

.....

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Attorneys for Atlantic Coast Line Railroad Company

JACKSONVILLE TERMINAL COMPANY

.....

MCCARTHY, ADAMS & FOOTE
Attorneys for Jacksonville Terminal Company

SEABOARD AIR LINE RAILROAD COMPANY

.....

COX, GRISSETT & WEBB
Attorneys for Seaboard Air Line Railroad Company

Mr. McAlliley: It is only for the record.

Mr. Milledge: As I read the amended complaint, I don't see the names mentioned in it, other than in the caption, and, unless there's some allegations—it seems to me that this—that it is just—that it is just—that it unnecessarily burdens this matter to have other people in it.

I don't think there would be any representations here, Your Honor, that they are members of any of the defendant labor organizations.

The Court: Who do you conceive that A. L. Groves, and C. H. Wright are, Mr. Adams?

Mr. Adams: We contend, Your Honor, that they are members of another union, a non-operating union and we hope and expect to be able to prove that these people acted together in aiding and abetting in the acts which we say the defendants are guilty of.

The Court: And you say a "non-operating union"?

Mr. Adams: It is the Brotherhood of the Railway Clerks, I believe, is the particular union involved. And, we say that these men were actually acting together with, and in concert with the other named defendants.

The Court: But, you do not seek to join as a defendant, the Brotherhood of Railway Clerks, itself?

Mr. Adams: No.

The Court: Well, your motion to add those two, as defendants, is granted, and if you conceive that you need leave to file an amended complaint, that is granted, as well.

I am inclined to think you can do that without a Court order, and an order will be entered giving that leave.

The amended complaint was served on counsel for the defendants, I take it, on May 27th?

Mr. Milledge: It was served yesterday, yes, sir, but I have kind of lost track of the time.

Mr. Adams: I believe it was yesterday.

The Court: Yes, yesterday. It was yesterday. Another small matter. The amended complaint, on page three

thereof, in the last full line on that page, I shall, with your permission, change the word "*imminent*" to *emînate*, it is an interlineation.

Mr. Adams: All right.

The Court: And initial it on the margin. And, on page five, in paragraph 13 is a recital, all of which appears from the affidavits of certain named persons attached hereto and by this reference made upon this complaint. I take it that you mean the affidavits of those persons attached to the

Office-Supreme Court, U.S.
FILED
JUL 18 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 244

BROTHERHOOD OF RAILROAD TRAINMEN,
a labor organization, *et al.*,

Petitioners,

—v.—

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

BRIEF OF RESPONDENT JACKSONVILLE TERMINAL COMPANY IN OPPOSITION

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OPINION BELOW

The District Court of Appeal of Florida, First District, did not render an opinion. Its order denying the "Suggestion for Writ of Prohibition" is set forth in Appendix A to the Petition for Certiorari. (Pet. App. 1a)

STATUTES INVOLVED

The pertinent provisions of the Labor Management Relations Act, 1947 ("LMRA"), 29 U.S.C. § 141 *et seq.*, the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, and the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.*, are reprinted in the Appendix to the Petition. (Pet. App. 2a-12a) The pertinent provisions of the Florida Transportation Act, Fla. Stat. §§ 351.12, 351.14-.17, and 351.19, and the Florida Restraint of Trade Law, Fla. Stat. §§ 542.01-.12, are set forth in Appendix A to this Brief in Opposition.

QUESTIONS PRESENTED

Respondent[1] contends that the federal questions sought to be raised by Petitioners are not properly before this Court, inasmuch as there is no showing that the Florida District Court of Appeal, in denying Petitioners' request for extraordinary relief, passed on the merits of those questions. In any event, Respondent would state the substantive questions which Petitioners attempt to tender to this Court as follows:

(1) Whether the jurisdiction of a state court to adjudicate an action brought exclusively under state law is preempted by the jurisdiction of the National Labor Relations Board ("NLRB") under the LMRA, when the controversy which led to the state court action is entirely within the railroad industry and the labor relations of all participants with each other are subject to the Railway Labor Act and not to the LMRA?

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[1] While the Honorable Roger J. Waybright, Circuit Judge in the Fourth Judicial Circuit, Duval County, Florida, is also a Respondent, the term "Respondent" herein will generally be used to refer simply to Jacksonville Terminal Company.

(2) Whether the Norris-LaGuardia Act deprives a state court of jurisdiction to grant injunctive relief in an action brought exclusively under state law?

STATEMENT OF THE CASE

On May 4, 1966, Petitioners, Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen, three railway operating brotherhoods[2] who had been embroiled in a controversy with the Florida East Coast Railroad ("FEC"), threw a picket line around the property of the Respondent Jacksonville Terminal Company ("Terminal Company") in Jacksonville, Florida, a terminal facility jointly used by the Atlantic Coast Line Railroad Company ("Coast Line"), Seaboard Air Line Railroad Company ("Seaboard") and other rail carriers, including the FEC. The purpose of this picketing has been repeatedly admitted to be to induce Terminal Company, Coast Line and Seaboard to cease terminal operations for, and connecting and interchange operations with, FEC.[3] An immediate effect of it was to threaten a complete standstill of the movement of all mail, freight, express and passengers through or within the terminal area, whether these movements involved interchanges with the FEC or not. Another immediate effect was to threaten an immediate and total halt to the operations of Terminal Company, not simply those conducted for the FEC, but those conducted for the other

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[2] In addition, three individuals—officers and members of the Petitioner Brotherhoods—are also Petitioners in this matter.

[3] See, *e.g.*, Brief in Opposition to Petition for Certiorari in No. 220, O.T. 1966, p. 6; Memorandum of Respondents in Opposition to Petitioners' Application for a Stay in No. 220, pp. 18-21. See note 5, *infra*.

carriers using the Jacksonville terminal[4] and the services to shippers served from the terminal.

Respondent Terminal Company, together with Coast Line and Seaboard, commenced a suit later the same day in the United States District Court for the Middle District of Florida for a limited injunction against the picketing at the property of the Terminal Company.[5] After a contested hearing, the District Court that day entered a limited temporary restraining order restricting the picketing to the gate at the Terminal which had been previously set aside for FEC employees. On May 10, 1966, following a full evidentiary hearing, the District Court entered a similarly limited preliminary injunction.

Petitioners appealed from the order granting that injunction to the United States Court of Appeals for the Fifth Circuit. After argument, the Court of Appeals for the Fifth Circuit announced orally on the afternoon of May 23, 1966, that an order would be entered the following day vacating the limited preliminary injunction entered by the District Court on May 10, 1966.[6]

This action by the Court of Appeals would have permitted immediate resumption of the picketing at the Terminal Company, with consequent disruption of its opera-

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[4] The other carriers are Seaboard Air Line Railroad Company, Atlantic Coast Line Railroad Company, and the Southern Railway System.

[5] This suit is now pending before this Court in No. 220, O.T. 1966, certiorari having been granted on June 20, 1966. For a more detailed description of the background of the events which gave rise to the present case, see pp. 6-11 of the Petition for Certiorari in No. 220.

[6] Such an order was entered by the Court of Appeals on the following day, May 24, 1966, and it is this order which the Court has now undertaken to review in No. 220.

tions. In view of this, the Terminal Company commenced an action on that day in the Duval County, Florida, Circuit Court against the present Petitioners. The Complaint in this suit, as originally filed and as amended on May 27, 1966, is based exclusively on Florida law. (Pet. App. 20a, ¶3; 22a-23a, ¶12; 41a, ¶3; 43a-44a, ¶12)

The Complaint, as amended, alleges that the picketing of the Terminal Company is unlawful under Florida law on a variety of grounds: it seeks to effect a restraint of trade in violation of Florida law; threatens to prevent Respondent from providing transportation service as required by state law; unlawfully restrains Respondent from carrying on its business operations; constitutes a secondary boycott; interferes with Respondent's business and contractual relations; will result in a taking of Respondent's property; and constitutes an illegal interference with the rights of Respondent's employees to earn a living. (Pet. App. 43a-44a, ¶12)

The Answer raises various issues of fact, and contains eight affirmative defenses, including claims that the dispute is governed by federal law and that under federal law the state court has no jurisdiction to entertain the Complaint. (Pet. App. 36a-38a)

Following a contested hearing, the Circuit Court concluded that the acts complained of were in violation of Florida law.[7] On May 30, 1966, the Circuit Court entered a limited temporary injunction restraining Petitioners from

[7] The Circuit Court found that the picketing, if resumed, would cause a "virtual cessation of activities not only of the Terminal Company but also of numerous industries in Duval County and throughout the remainder of the State of Florida," and that it would "adversely affect an entire economic area, from Duval

picketing the Terminal Company's properties except at the entrance designated for use of the FEC employees, from inducing the employees of the Terminal Company to cease working, and from interfering with the Terminal Company's operations. (Pet. App. 48a)

Although they could have appealed this order,[8] Petitioners chose not to. Instead, on June 3, 1966, Petitioners filed a "Suggestion for Writ of Prohibition" in the District Court of Appeal of Florida, First District, asking that an extraordinary writ issue "prohibiting" the Circuit Judge "from exercising jurisdiction." (Pet. App. 13a) On June 8, 1966, following oral argument, the District Court of Appeal entered an order denying the "Suggestion" for the reason that "said suggestion fails to make out a prima facie case upon which Rule Nisi could issue." (Pet. App. 1a)

County to Key West, Florida, and would cause economic strangulation of the entire state." (Pet. App. 49a-50a)

The Court concluded that:

> "The past and threatened picketing did and will constitute economic pressure in the nature of a secondary boycott which is illegal under Florida law. Further, the picketing seeks to force the plaintiff to violate its duties and obligations as a carrier under the Florida Transportation Act, F.S. § 351.12, 351.14, 351.15, 351.16, 351.17 and 351.19, and seeks to coerce plaintiff into agreeing to embargo the FEC in violation of the Restraint of Trade Laws of this State. Chapter 542, Florida Statutes. Finally, the past and threatened picketing did and will unjustifiably interfere with and interrupt plaintiff's constitutional right to carry on its business, and said picketing constitutes the independent tort of unjustifiable interference with the contractual relationships between plaintiff and its shippers and between plaintiff and its employees." (Pet. App. 50a)

[8] See pp. 7-8, *infra*.

It is this order of the District Court of Appeal[9] which the Petition for Certiorari seeks to bring before this Court for review.

ARGUMENT

1. *There is no showing that the Florida District Court of Appeal decided the Federal questions which the Petitioners seek to raise in this Court, or that any decision on those questions was necessary to its decision.*—The brief order of the District Court of Appeal denying Petitioners' application for an extraordinary writ does not indicate that the Federal questions sought to be raised by Petitioners in this Court were in fact passed upon by the District Court of Appeal. Nor can it be said that a decision on these questions was necessarily implicit in that court's action, or that there could be no adequate state-law basis for its failure to decide those questions. Accordingly, under principles too familiar to require discussion, there is no jurisdiction at this point to consider those questions on certiorari.

In the District Court of Appeal, the first ground of opposition by Respondent to the application for prohibition was based entirely on the unavailability of that remedy to Petitioners as a matter of state law. Under Florida law Petitioners had an adequate, speedy remedy available in the State courts—appeal from the Circuit Court's grant of the temporary injunction—to correct any error or defect in the Circuit Court's proceedings, including lack of jurisdiction of the subject matter on the basis of the federal-law contentions now sought to be raised by Petitioners.

[9] Further proceedings have gone forward in the Circuit Court since the District Court of Appeal's order. The Circuit Court has made rulings on discovery and has set a date for the final hearing on a permanent injunction—July 29, 1966.

Rule 4.2 of the Florida Appellate Rules provides for appeals from interlocutory orders and decrees, and contemplates speedy and complete review of these orders and decrees.[10]

It is settled in Florida that under these circumstances, as a matter of state law, the extraordinary writ of prohibition is not available: ". . . [W]here an appeal lies from an interlocutory order, a writ of prohibition is only authorized where the remedy by appeal from such order is not plain, speedy, and adequate." *State ex rel. Meredith*

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[10] Rule 4.2 provides in relevant part:

"a. *Application.* . . . appeals to the appropriate court from interlocutory orders or decrees in equity . . . may be prosecuted in accordance with this rule;

"b. *Time for Filing.* The notice of appeal, which shall designate the appeal as an interlocutory appeal, and assignments of error shall be filed simultaneously within 60 days from the rendition of the order, judgment or decree sought to be reviewed.

• • •

"d. *Record-on-Appeal.* No record on appeal shall be required or permitted other than certified copies of the appeal papers and the judgment or order appealed from. Such certified copies shall be served and filed within 15 days from the date of the filing of the notice of appeal. The appendices shall contain full copies of all pleadings and other parts of the record needed to determine the appeal.

"e. *Briefs.* . . . appellant's main brief shall be served within 15 days after the notice of appeal is filed, appellee's brief shall be served within 10 days after he is served with appellant's brief, and appellant's reply brief shall be served within five days after he is served with appellee's brief. All briefs shall be promptly filed after service.

"f. *Hearing and Disposition.* When oral arguments are requested, interlocutory appeals shall be set by the Court for argument at the earliest practicable date."

Under Rules 3.6 and 3.12, the appellant may seek, and the Court may grant, an even more accelerated schedule for briefing and argument.

v. *Board of Trustees,* 102 Fla. 219, 223, 135 So. 781, 783 (1931). This is an application of the general principle followed by the Florida courts that a writ of prohibition will issue to prevent a lower court from acting without jurisdiction or in excess of its jurisdiction only if the party seeking the writ has no other adequate remedy. *Crill* v. *State Road Department,* 96 Fla. 110, 115-16, 117 So. 795, 797-98 (1928); *Sherlock* v. *City of Jacksonville,* 17 Fla. 93 (1879); *State ex rel. Paulska* v. *White,* 162 So. 2d 697, 699 (Fla. App. 1964); *Curtis* v. *Albritton,* 101 Fla. 853, 132 So. 677 (1931); *State ex rel. Schwarz* v. *Heffernan,* 142 Fla. 137, 140, 194 So. 313, 314 (1940).

Indeed, the Respondent's first argument in opposition to the application for prohibition was precisely on the ground that: "Petitioners Have Not Made a Prima Facie Case for Issuance of a Rule Nisi Since Petitioners Have an Adequate Remedy by Interlocutory Appeal and Because Prohibition Cannot Be Used to Review the Correctness of Decisions of the Lower Court." Brief in Opposition to Suggestion for Writ of Prohibition, p. 1. Respondent also brought to the attention of the District Court of Appeal the accepted principle of Florida law that the issuance of a rule nisi and the granting of the extraordinary writ rest in the sound discretion of the court, to be exercised "only in cases of great urgency, special emergency or absolute necessity." *State ex rel. Urga* v. *Grayson,* 80 So.2d 679 (Fla. 1955); see *Sherlock* v. *City of Jacksonville, supra.*

There is no showing that the "Suggestion for Writ of Prohibition" was not denied for these obvious and clearly adequate state-law reasons—essentially, for the Petitioners' neglect of their ordinary remedy of interlocutory appeal—rather than on the basis of a rejection of the Fed-

eral claims urged by Petitioners.[11] But it is the burden of Petitioners, particularly in the presence of such an obvious and clearly adequate state ground, to demonstrate that the state grounds do not account for the decision below. See *Durley* v. *Mayo*, 351 U.S. 277, 281 (1956); *Stembridge* v. *Georgia*, 343 U.S. 541, 547-48 (1952); *Ellis* v. *Dixon*, 349 U.S. 458, 459 (1955); *Lynch* v. *New York*, 293 U.S. 52, 54-55 (1934); *Woods* v. *Nierstheimer*, 328 U.S. 211 (1946); *Phyle* v. *Duffy*, 334 U.S. 431 (1948). In the absence of such a showing it cannot be said that the Federal questions are properly before this court on certiorari.

Petitioners' principal reliance in support of this Court's jurisdiction is apparently on *Local No. 438* v. *Curry*, 371 U.S. 542 (1963). (Pet. 7) But that case has nothing to do with the present one. There it was held that a decision of a state supreme court which ordered the issuance of a preliminary injunction, after passing on and rejecting a federal claim of preemption of state court jurisdiction by the LMRA, amounted to "final judgment," a prerequisite under Section 1257(3) of the Judicial Code to this Court's review of a state court's action. We need not at this point take issue with the contention that the District Court of Appeal's judgment is technically "final," since this Court's

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[11] The Petitioners suggest (Pet. 6 & n. 7) that because the District Court of Appeal "denied" rather than "dismissed" the suggestion for a writ of prohibition, its action was based on a judgment as to the merits of the underlying federal questions tendered to it. The Florida cases, including the one cited by Petitioners, do not articulate any principle that would invest the District Court of Appeal's choice of words with the verbal magic contended for by Petitioners. Indeed, the district courts of appeal in Florida in other cases than the present one have used the word "denied," rather than "dismissed" in rejecting, on jurisdictional, procedural, or other grounds not related to the underlying substantive issues, suggestions for extraordinary writs. See *State ex rel. Paulska* v. *White*, 162 So.2d 697 (Fla. App. 1964); *State ex rel. Marshall* v. *Turner*, 175 So.2d 809 (Fla. App. 1965).

decisions indicate that denials of applications for extraordinary writs from state appellate courts in proceedings which are technically separate from a main action pending in a lower state court are jurisdictionally "final judgments" within the meaning of Section 1257. See *New York ex rel. Bryant* v. *Zimmerman,* 278 U.S. 63 (1928); *Pacific Coast Dairy* v. *Department of Agriculture,* 318 U.S. 285 (1943); Stern & Gressman, *Supreme Court Practice* (3d ed. 1962), p. 84. The point is simply that the extraordinary writ has not been shown to have been denied here other than on the grounds of its inappropriateness as a remedy under state law.

To be sure, even if technically "final," the nature of the order sought to be reviewed is essentially interlocutory, and we urge this as a discretionary reason against the granting of certiorari. *Cf. Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.,* 240 U.S. 251, 258 (1916); Boskey, *Finality of State Court Judgments Under the Federal Judicial Code,* 43 Colum. L. Rev. 1002, 1022 (1943). Unlike the situation in the *Curry* case, the jurisdiction of the state courts has not been finally passed on by any state appellate tribunal. Petitioners may renew their objections to state court jurisdiction, and attempt a further evidentiary development of those objections, at the hearing on the permanent injunction, which is presently scheduled in the Circuit Court for July 29, 1966; and may thereafter obtain a review on appeal by the appellate courts of Florida if the decision goes against them. Indeed, that appellate review may include discretionary review by the State Supreme Court—a review which Petitioners claim was not available with respect to the application for prohibition.[12]

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[12] Indeed, it is far from clear that discretionary review of the denial of the suggestion for a writ of prohibition here could *not* have been obtained from the Supreme Court of Florida—despite

In the absence of any final determination by the Florida courts of their jurisdiction over this suit, this case is clearly not ripe for review by this Court at this stage of the proceeding—even apart from the jurisdictional defect of the absence of any demonstration that the District Court of Appeal passed on or had to pass on the Federal questions now being tendered.—In sum, even if the substance of those questions were much stronger than it is, the jurisdictional defect would preclude the granting of certiorari; and in any event the interlocutory nature of the order sought to be reviewed would, we submit, counsel against such a grant.

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the Petitioners' assertion, without citation of case authority, to the contrary. (Pet. 5 n. 6) Thus there appears to be a serious question whether Petitioners have demonstrated that the order which they seek to have reviewed is indeed a "judgment or decree rendered by the highest court of a state in which a decision could be had." 28 U.S.C. § 1257.

To be sure, Article V, Section 4(2), para. 3, of the Florida Constitution provides that: "The supreme court may issue . . . writs of prohibition . . . to the trial courts when questions are involved upon which a direct appeal to the supreme court is allowed as a matter of right"; but it would appear the more logical reading of this provision, together with the broad provisions for discretionary review of the decisions of the district courts of appeal on certiorari, that all that the quoted language is meant to embrace is the category of cases in which an application for prohibition may be made *directly to the supreme court in the first instance*, and that it does not prohibit supreme court review of a prohibition application granted or denied by a district court of appeal. There would be an obvious reason why the category of cases in which an original supreme court prohibition can issue is defined in the Constitution as identical to those in which there is a direct appeal to that court from the trial courts—namely, that it was desired to establish a symmetry between those cases in which a direct appeal could be taken to the supreme court and those in which (the conditions upon the grant of the extraordinary writ being fulfilled) a writ of prohibition might be applied for in the first instance to the supreme court. By a parity of reasoning, since the supreme court may in its discretion review on certiorari appeal cases which have been heard by the district courts of appeal, it has under similar circumstances, jurisdiction to entertain certiorari applications from the grant or

2. *The Federal questions tendered to this Court at this point are in any event without substance.*—(a) *Alleged Preemption by NLRB Jurisdiction*— The first contention of Petitioners is that review is necessary to protect the "exclusive primary jurisdiction" of the NLRB over the controversy which gave rise to Respondent's suit in the Florida Circuit Court. But it is perfectly plain from the language of the LMRA, the interrelationship of that Act with the Railway Labor Act, and the decided cases in this and other courts, that there is no NLRB jurisdiction over this controversy to protect. This controversy is not even "arguably subject" to NLRB jurisdiction. *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 245 (1959).

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denial of a writ of prohibition. The Florida Supreme Court has never denied its certiorari jurisdiction over orders of the district courts of appeal granting or denying prohibition; indeed, where it has dismissed an appeal as of right from such an order, it has done so on the basis that the ordinary conditions for appeal as of right from the district courts of appeal were not met, not on the ground that because prohibition was involved, there was any absolute bar against its review of the district court of appeal's order. See *State ex rel. Emmanuel* v. *Cooper*, 152 So.2d 471 (1963).

The language of the Florida Constitution's certiorari clause is broad:

> "The supreme court may review by certiorari *any decision of a district court of appeal* that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest, or that it is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law . . . ." (Art. V, § 4(2), para. 2) (emphasis supplied)

Here the petitioners made no attempt whatsoever to request the district court of appeal to certify the questions presented to it by the suggestion for a writ of prohibition as "of great public interest," or to obtain review in the state supreme court. We submit that it was obligatory upon Petitioners to have invoked the exercise of the discretion of the district court of appeal in so certifying the question, or of the state supreme court in reviewing the case on certiorari, before coming to this Court. See *Stratton* v. *Stratton*, 239 U.S. 55 (1915); *Matthews* v. *Huwe*, 269 U.S. 262, 265-66 (1925).

The definitional section of the LMRA is plain on its face in exempting controversies entirely within the railroad industry, as this one is, from the coverage of the Act and the jurisdiction of the NLRB. Section 2 of the Act provides in pertinent part:

> "(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any person subject to the Railway Labor Act, as amended from time to time . . . .
>
> "(3) The term 'employee' shall include any employee . . . but shall not include . . . any individual employed by an employer subject to the Railway Labor Act, as amended from time to time . . . ." 29 U.S.C. §§ 152(2), (3).

"Labor organizations" are subject to the Act only if "employees" within the foregoing definitions participate in them:

> "(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. § 152(5).

There is no dispute that all the participants in the controversy which led to the Circuit Court proceeding—the FEC, its employees, the Coast Line, the Seaboard, the Terminal Company, their employees, and the Petitioners—are persons subject to the Railway Labor Act. There is likewise no doubt that their labor relations with each other

are excluded from the coverage of the LMRA. As this Court has often made clear, the Railway Labor Act is a self-contained system for the settlement of disputes *within the railroad industry*. See, *e.g.*, *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711 (1945); *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.*, 353 U. S. 30 (1957).

It makes a mockery of this whole elaborate scheme for dealing with labor controversies in the railroad industry to suggest that Congress also superimposed on it the regulatory regime of the LMRA and the potentially conflicting jurisdiction of the NLRB. The authors of the LMRA made it plain that they had no such purpose:

> "The exemption of employees of employers subject to the Railway Labor Act is to make it perfectly clear that in providing remedies for unfair labor practices of unions and their agents [in the LMRA] it was not intended to include such employees." S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 19.

As this Court has pointedly said:

> "The Act, in its definition of an 'employer', expressly excludes anyone subject to the Railway Labor Act. 61 Stat. 137, 29 U.S.C. § 152(2). It is of course true that employer-employee relationships of railroads such as respondent are governed by the Railway Labor Act, which was passed before either the National Labor Relations Act or the Labor Management Relations Act. Neither of the latter Acts was intended to tread upon the ground covered by the Railway Labor Act. It is clear that neither railroads nor their employees may carry their grievances with one another to the N. L. R. B. for resolution. . . ."

> "We think it clear that Congress, in excluding, 'any person subject to the Railway Labor Act' from the statutory definition of 'employer', carved out of the Labor Management Relations Act the railroads' employer-employee relationships which were, and are, governed by the Railway Labor Act." *Local Union No. 25* v. *New York, N. H. & H. R. Co.*, 350 U. S. 155, 159-60 (1956).[13]

The authorities relied on by Petitioners as upholding NLRB jurisdiction at the instance of, or over, certain persons subject to the Railway Labor Act are all inapposite.

In each such case, at least one of the other participants in the controversy was a person clearly subject to the LMRA and the controversy did not involve relationships entirely within the railway industry.[14]

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[13] See also *DiGiorgio Fruit Corp.* v. *NLRB*, 191 F.2d 642, 646-47 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 869 (1951); *NLRB* v. *Interior Enterprises*, 298 F.2d 147 (9th Cir. 1961); *Bruno* v. *Northeast Airlines*, 229 F. Supp. 716, 717 (D. Mass. 1964).

[14] Thus, in *Local Union No. 25* v. *New York, N.H. & H.R. Co., supra*, this Court merely held that a railroad could invoke the processes of the NLRB against conduct of the Teamsters Union which was engaged in a dispute with certain motor carriers. Neither the Teamsters nor the motor carriers were persons subject to the Railway Labor Act with respect to their labor relations with each other, and the railroad had no labor dispute with any railway employees.

Similarly, in *International Brotherhood of Electrical Workers* v. *NLRB*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966), the Court of Appeals affirmed the assertion of NLRB jurisdiction over unions subject to the Railway Labor Act solely on the ground that they were "agents" of and "joint venturers" with other unions which were subject to the LMRA. 350 F.2d, at 792. The unions were engaged in unlawful secondary picketing of persons not subject to the Railway Labor Act, and Section 8(b) of the LMRA imposes liability for unfair labor practices by "a labor organization *or its agents.*" 29 U.S.C. § 158(b) (emphasis supplied). See 150 N.L.R.B. No. 37, 57 L.R.R.M. 1526 (1964). There is no claim here of any "agency" or "joint venture" with a party subject to the LMRA.

In the present case, nobody asserts that either the Petitioners, the Respondent, the Coast Line, the Seaboard, the FEC, or any of their employees related to the present matter are subject to the LMRA or are acting as agent for, or joint venturer with, any persons subject to that Act. *Cf. International Brotherhood of Electrical Workers* v. *NLRB,* 350 F.2d 791 (D.C. Cir. 1965), *cert. denied,* 383 U.S. 943 (1966). Indeed, in their petition for certiorari, Petitioners "candidly and earnestly submit that their status is such that they are *not* covered by the L.M.R.A." (Pet. 16, emphasis original) It is somewhat difficult to say that this matter is "arguably" subject to the jurisdiction of the NLRB when no one is willing to step forward and make any such argument.[15]

It bears reemphasis that every member of the cast of characters in the events forming the basis of Respondent's suit in the Circuit Court is a person subject to the Railway Labor Act, and this case exclusively concerns relationships within the railway industry.[16] No case has held the LMRA

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[15] "There are two major Federal Labor statutes that deal with the matter of labor disputes affecting interstate commerce, and they are not at all similar. They are very dissimilar. They have different approaches to the problem.

"One of them, of course, is the Taft-Hartley Act.
"The other one is the Railway Labor Act.
"Now, this is a pure Railway Labor Act dispute."

Argument on behalf of the present Petitioners, in *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen,* U.S.D.C., M.D. Fla., May 4, 1966, Tr. 81 (now before this Court as No. 220, O.T. 1966).

[16] The NLRB case relied on by Petitioners as involving an assertion of NLRB jurisdiction over two of them, *Brotherhood of Locomotive Firemen & Enginemen,* 130 N.L.R.B. No. 94, 47 L.R.R.M. 1461 (1961), *modified,* 302 F.2d 198 (9th Cir. 1962), is clearly

applicable in such a situation, and for good and obvious reasons. If this case is one "arguably" within the jurisdiction of the NLRB, it would be hard to imagine a railway labor case which was not; and the exception which Congress carefully preserved in LMRA would become a nullity.[17] Petitioners' argument on this point is without substance and even if properly before this Court would furnish no basis for the grant of certiorari.

(b) *Alleged Conflict with Norris-LaGuardia*—The contention of Petitioners that the state courts lack power to issue an injunction in a case brought under Florida state law because of the Norris-LaGuardia Act is of even less substance. That Act is plain on its face in limiting the jurisdiction *only of the federal courts* to grant injunctive

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inapposite because it involved neither persons nor a controversy entirely within the railway industry. The controversy there was between non-railway employees and their employer; the two Petitioners happened to be the collective bargaining representative for these non-railway employees.

Marine Engineers Beneficial Ass'n v. *Interlake Steamship Co.*, 370 U.S. 173 (1962), held merely that the NLRB had exclusive primary jurisdiction to determine whether the Marine Engineers was a "labor organization" under Section 8(b) of the LMRA, or was excluded from the coverage of the Act because it represented only "supervisors." The NLRB had previously laid down principles for determining a "labor organization" which made it clear that it would assert jurisdiction over the Marine Engineers. No such issue is presented in the instant case, nor do Petitioners contend they are a "labor organization" under the LMRA. Moreover, *Marine Engineers* did not involve the specific exclusion of controversies within the railway industry from the coverage of the LMRA.

[17] This is not to say that the broad national policies which Congress has laid down in the LMRA may be ignored in construing the Railway Labor Act or in any judicial consideration of railway labor questions. But obviously the specific administrative regulatory regime of the NLRB under the LMRA is completely foreign to a matter like the present one.

relief. The declaration of public policy in Section 2 of the Act states:

> "... the following definitions of and limitations *upon the jurisdiction and authority of the courts of the United States* are enacted." 29 U.S.C. § 102. (emphasis supplied)

The Act repeatedly states:

> "No court of the United States shall have jurisdiction [to grant injunctive relief in the enumerated situations]." §§ 1, 4, 5, 7, 29 U.S.C. §§ 101, 104, 105, 107.

The definitional section spells out the scope of the Act in terms which allow no room for argument:

> "The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia." § 13(d), 29 U.S.C. § 113(d).

This language is so clear and unequivocal that no court, state or federal, has held that the Norris-LaGuardia Act limits the historic equity jurisdiction of the state courts. As the Court of Appeals for the Third Circuit has said:

> "There is nothing in the language of the Act or its legislative history which can possibly, within 'the range of judicial inventiveness,' or the process of judicial *fashioning,* be construed as extending to the jurisdiction of state courts." *American Dredging Co.* v. *Local 25,* 338 F.2d 837, 852 (3d Cir. 1962), *cert. denied,* 380 U.S. 935 (1965). (emphasis original)

In Justice Traynor's words:

> "The statute aimed to restrict the federal equity power, and was justified constitutionally on the basis of Congress' power to regulate the jurisdiction of the federal courts . . . . It did not limit the remedial power of the state courts . . . ." *McCarroll* v. *Los Angeles Dist. Council,* 49 Cal. 2d 45, 63, 315 P.2d 322, 332 (1957), *cert. denied,* 355 U.S. 932 (1958).[18]

In their classic work on the labor injunction, then-Professor Frankfurter and Mr. Greene wrote of the proposal which became the Norris-LaGuardia Act:

> "[It] explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220.

The principal reed which Petitioners grasp on this point appears to be a footnote in this Court's opinion in *Charles*

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[18] Other cases which have rejected the notion that the Norris-LaGuardia Act deprives the state courts of their historic equity powers are: *Ford* v. *Boeger,* 236 F. Supp. 831 (E.D. Mo. 1964); *United Electrical, Radio & Marine Workers* v. *Westinghouse Elec. Corp.,* 65 F. Supp. 420 (E.D. Pa. 1946); *Shaw Elec. Co.* v. *International B'hood of Elec. Workers,* 418 Pa. 1, 208 A.2d 769 (1965); *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n,* 382 Pa. 326, 115 A.2d 733 (1955), *cert. denied,* 350 U.S. 843 (1955); *General Building Contractors' Ass'n* v. *Local Union No. 542,* 370 Pa. 73, 87 A.2d 250 (1952); *Curtis* v. *Tozer,* 374 S.W. 2d 557, 590-92 (Mo. App. 1964); *C. D. Perry & Sons, Inc.* v. *Robilotto,* 39 Misc. 2d 147, 240 N.Y.S.2d 331 (Sup. Ct. 1963); *Southern Bus Lines* v. *Amalgamated Ass'n of Street Elec. Ry. & Motor Coach Employees,* 205 Miss. 354, 38 So.2d 765 (1949); *Markham & Callow* v. *International Woodworkers,* 170 Ore. 517, 567-68, 135 P.2d 727, 746 (1943).

Dowd Box Co. v. *Courtney*, 368 U.S. 502, 514 n. 8 (1962), to the effect that: "The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court."

Obviously, the short answer to Petitioners' suggestion that this case is an appropriate one to resolve the question referred to in the footnote is that this case has nothing to do with that question. This case does not involve a state court applying federal labor law but a state court applying state law. In the footnote in the *Charles Dowd* case, this Court was simply alluding to the suggestion, mooted from time to time, that the Norris-LaGuardia restrictions on the federal injunctive power are part of the federal labor law and policy which Section 301 of the LMRA requires state courts to apply in Section 301 suits brought in the state courts. See *American Dredging Co.* v. *Local No. 25*, 338 F.2d 837 (3d Cir. 1964), *cert. denied*, 380 U.S. 935 (1965).[19]

Clearly, this question has no relationship to cases like the present one where a state court was requested to exercise its equity power in a suit brought to enforce state-created rights and governed by state law. Respondent based its suit in the Circuit Court exclusively on Florida law. The Circuit Court in granting the temporary injunction relied on the common and statutory law of Florida: the common law of the State against secondary boycotts, and against unjustifiable interference with contractual relations and with the right to carry on business; and the statutory law, in that Petitioners' conduct was an attempt

[19] Of course, suits under Section 301 are suits to enforce federally-created rights and are governed by a corpus of federal labor law. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957).

to coerce Respondent to violate its duty as a carrier under the Florida Transportation Act and to impose an embargo on the FEC in violation of the Florida restraint of trade laws. (See Pet. App. 50a, and the quotations at pp. 5-6 n. 7, *supra*)—Certainly, Petitioners' argument on this point is so lacking in substance as to furnish no basis for the granting of certiorari.[20]

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[20] As we have indicated, even if it is assumed that the Norris-LaGuardia Act would prevent a federal court from granting an injunction in the factual situation involved in this case, it is clear that a state court applying state law is not barred by that Act. Of course, Respondent, together with Coast Line and Seaboard, is arguing in No. 220 that the Norris-LaGuardia Act does not prevent a federal court from exercising injunctive powers in this general factual situation. However, it is obvious that this Court need not decide any of the issues presented in No. 220 in passing on the present Petition for Certiorari; accordingly, there would appear to be no basis for deferring action on the present petition in the light of the pendency of No. 220.

We must observe that Petitioners by their position in No. 220 and in this case apparently are denying that there is any organ of Government, federal or state, judicial or administrative, having jurisdiction to restrain their conduct, despite its devastating impact on the State of Florida—and indeed on the whole of the southeastern region of the United States—even if that conduct is unlawful under state or federal law or both. Comment on the relationship between this position and the principle of the rule of law in the settlement of controversies would appear superfluous.

CONCLUSION

For the reasons stated, the Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

1. The Florida Transportation Act provides in pertinent part:

351.12 FREIGHT NOTICE

All common carriers engaged in the transportation and delivery of freight in this state, immediately upon receipt of any freight at the point to which it may be consigned, shall notify in writing the consignee of the same. Such common carriers shall make no charges for the storage of such freight until after the expiration of three days after such notice is given as hereinbefore provided. Such common carriers shall be liable for said freight.

351.14 DUTY OF RAILROAD COMPANIES WITH CROSSING LINES

All railroad companies in this state crossing or meeting each other at any point shall construct such switches, side-tracks and connections as will enable them to transport cars to and from each other's lines; and the expense of such construction shall, unless otherwise provided, be borne equally by such connecting lines of railroad.

351.15 SHIPPING OF FREIGHT

All railroad companies or other common carriers doing business in this state shall ship all freight received by them by such routes, and deliver the same to such connecting lines as the shippers may direct; and no railroad company or other common carrier shall refuse to receive any freight because it is billed by the shipper by any particular route; and provided, that no

railroad company, nor other common carrier, shall charge any higher rate for delivering freight to a connecting line than would be charged by said company for delivering freight to individuals at the place where such connecting road or common carrier receives such freight.

351.16 To receive cars from connecting lines

All railroad companies or other common carriers shall receive from connecting lines cars loaded with freight, or empty cars, and transport the same to their destination, or to such other connecting line as they may be consigned to, and return such cars to the connecting line from which they are received, and they shall also deliver to connecting lines cars loaded with freight, or empty cars, as they may be consigned; and no railroad company in this state shall charge or collect any higher rate of freight or wheelage than would be charged for transporting and delivering freights to individuals between the point of receipt and the point of delivery.

351.17 Recovery of damages

If any person shall be damaged by the refusal or failure of any railroad company to obey the provisions of §§ 351.14-351.16, such person shall, upon suit brought, recover from the railroad company so violating said sections damages in full of the amount of loss actually incurred, all costs, charges and reasonable attorney's fees.

351.19 Penalty for not complying with laws relating to transfer of freight to other roads

If any person, agent or employee of any railroad company, or other common carrier, shall violate or refuse

to obey the provisions of §§ 351.14-351.18, such officer, agent or employee of such railroad company or other common carrier shall be fined not less than two hundred and fifty dollars, nor more than one thousand dollars.

2. The Florida Restraint of Trade Law provides as follows:

542.01 DEFINITIONS; TRUST, COMMODITY

(1) A trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

(a) To create or carry out restrictions in trade or commerce, or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(b) To increase or reduce the price of merchandise, produce or commodity;

(c) To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce;

(d) To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state; or,

(e) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or descrip-

tion by which they shall bind or have bound themselves not to sell, dispose of or transport any article, commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

Provided, however, that no agricultural or horticultural non-profit cooperative association organized and incorporated under the laws of the state nor the members, officers, agents or employees thereof or any of them, as such, shall be deemed to be a trust, a combination in restraint of trade, an illegal monopoly or any attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to be a trust, or be considered illegal or in restraint of trade.

(2) As used in this chapter, the word commodity shall include any article, product, merchandise, thing of value, service or output of a service trade.

542.02 FORFEITURE OF CHARTER OF DOMESTIC CORPORATIONS FOR VIOLATIONS

Any corporation holding a charter under the laws of the state which shall violate any of the provisions of this chapter shall forfeit its charter and franchise, and its corporate existence shall cease.

542.03 DISSOLUTION PROCEEDINGS INSTITUTED BY ATTORNEY GENERAL, ETC.

For a violation of any of the provisions of this chapter by any corporation mentioned herein, the attorney general or any state attorney upon his own motion, and without leave or order of any court or judge, shall institute suit or quo warranto proceedings for the forfeiture of its charter rights and franchises and the dissolution of its corporate existence.

542.04 FOREIGN CORPORATION VIOLATING CHAPTER DENIED RIGHT TO DO BUSINESS IN STATE

Every foreign corporation violating any of the provisions of this chapter is denied the right and prohibited from doing business within this state. The attorney general shall enforce this provision by injunction, or other proper proceedings, in the name of the state.

542.05 COMBINATIONS PROHIBITED; PENALTY

Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons or of either two or more of them, for either, any or all of the following purposes:

(1) To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry

out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;

(2) To increase or reduce the price of merchandise, produce or commodities;

(3) To prevent competition in the manufacture, making, transportation, sale, or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce;

(4) To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this state; or,

(5) Except as otherwise provided in chapter 541, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected; or any person who shall aid

or advise in the creation or carrying out of any such combination, or knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations, as principal, manager, director, agent, servant, or employee, or in any other capacity, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary for not less than one nor more than ten years. Each day during a violation of this provision shall constitute a separate offense.

Provided, however, that no agricultural or horticultural non-profit cooperative association organized and incorporated under the laws of the state, nor the members, officers, agents or employees thereof, or any of them as such, shall be deemed to be a combination prohibited under the meaning of this section nor shall the marketing contracts or agreements between any such association and its members, or between any two or more of such associations, be deemed to have created a combination prohibited herein.

542.06 SUFFICIENCY OF INDICTMENT

In any indictment or information for an offense named in this chapter it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with, or in pursuance of it, without giving its name or description, or how, when, or where it was created.

542.07 RULE OF EVIDENCE

In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists, and that the defendant or defendants belonged to it or

acted for or in connection with it, without proving all members belonging to it, or providing or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. General reputation may be given in evidence in all prosecutions of alleged combinations under the provisions of this chapter.

542.08 CRIMINAL LIABILITY OF NONRESIDENT

Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons violating its provisions, whether within or without this state.

542.09 DAILY PENALTY FOR CONTINUED VIOLATIONS

Every person who shall in any manner violate any of the provisions of this chapter, shall, for each day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state in any county where the offense is committed. The attorney general and the state attorneys and county solicitors shall prosecute for and recover the same.

542.10 CONTRACT IN VIOLATION OF CHAPTER VOID

Any contract or agreement in violation of the provisions of this chapter shall be void and not enforceable either in law or equity.

542.11 OFFICERS AUTHORIZED TO SUBPOENA WITNESSES TO TESTIFY AS TO VIOLATIONS; TESTIMONY OF WITNESSES

Any court, officer, or tribunal having jurisdiction of the offense defined in this chapter, or the attorney general, or any state attorney or county solicitor or grand jury, may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of this chapter. Any person so summoned and examined shall not be liable to prosecution for any violation of this chapter about which he may testify fully and without reservation.

542.12 CONTRACTS IN RESTRAINT OF TRADE INVALID; EXCEPTIONS

(1) Every contract by which anyone is restrained from exercising a lawful profession, trade or business of any kind, otherwise than is provided by subsection (2) and (3) hereof, is to that extent void.

(2) One who sells the good will of a business, or any shareholder of a corporation selling or otherwise disposing of all of his shares in said corporation, may agree with the buyer, and one who is employed as an agent or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area, so long as the buyer or any person deriving title to the good will from him, and so long as such employer continues to carry on a like business therein. Said agreements may, in the discretion of a court of competent jurisdiction be enforced by injunction.

(3) Partners may, upon or in anticipation of a dissolution of the partnership, agree that all or some of them will not carry on a similar business within a reasonably limited time and area.

(4) This section does not apply to any litigation which may be pending, or to any cause of action which may have accrued, prior to May 27, 1953.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 244

BROTHERHOOD OF RAILROAD TRAINMEN,
a labor organization, *et al.*,

Petitioners,

—v.—

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

SUPPLEMENTAL BRIEF OF RESPONDENT JACKSONVILLE TERMINAL COMPANY IN OPPOSITION

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SUPPLEMENTAL BRIEF OF RESPONDENT JACKSONVILLE TERMINAL COMPANY IN OPPOSITION

This Supplemental Brief in Opposition is filed to advise the Court of certain events that have transpired in the proceedings going forward in this matter in the Florida State courts since our Brief in Opposition was filed, July 18, 1966.

As we advised the Court in our Brief in Opposition (p. 7, n. 9), July 29, 1966, was set as the date for a final hearing

in the Circuit Court on the question of a permanent injunction. At that hearing, additional proofs were submitted by both parties. After hearing, the Circuit Court entered a limited permanent injunction forbidding picketing except at the Terminal gate at Bay and Stuart Streets designated for use by FEC employees. We attach a copy of the Final Decree of the Circuit Court as Appendix A hereto.

This permanent injunction—as was the temporary injunction—is now subject to the normal appellate processes in the courts of Florida, should petitioners care to invoke them. The petitioners—who sought to have the Florida appellate courts review the issuance of the temporary injunction through an extraordinary writ of prohibition, rather than go through their normal appellate remedies[1]—now have 60 days from July 29, 1966, to file their notice of appeal to the District Court of Appeal to obtain the first stage of appellate review of the permanent injunction. As of the date on which this Supplemental Brief in Opposition went to press, September 1, 1966, no such notice of appeal had been filed.

The Petition for Certiorari filed by petitioners in this matter seeks to have this Court review a judgment which has not been shown to rest other than on adequate state grounds,[2] a judgment which is essentially interlocutory,[3] and a judgment which does not appear clearly to have been rendered "by the highest court of a state in which a decision could be had."[4] The normal course of proceedings

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[1] See Brief in Opposition, pp. 7-8, and n. 10, for a description of those remedies.

[2] Brief in Opposition, pp. 7-11.

[3] *Id.*, pp. 11-12.

[4] 28 U.S.C. §1257. See Brief in Opposition, pp. 11-13 n. 12.

would contemplate, not this Court's review of a judgment posing so many jurisdictional difficulties, but petitioners' exhaustion of their state appellate remedies, either on interlocutory appeal from the temporary injunction or on appeal from the final injunction, before coming to this Court on a certiorari.[5] Petitioners have never sought any appellate remedies with respect to the interlocutory injunction, and they have not yet sought appellate remedies with respect to the permanent injunction. Review here can follow (if substantively appropriate) petitioners' appellate remedies in the Florida courts, when and if petitioners proceed with them. We submit that these circumstances further counsel against the grant of certiorari to review the District Court of Appeal's denial of petitioners' Suggestion for a Writ of Prohibition in this matter.

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[5] If the certiorari was sought from the affirmance of an interlocutory injunction, the jurisdictional doctrine of *Local No. 438* v. *Curry*, 371 U.S. 542 (1963), would have to be invoked.

CONCLUSION

For the reasons stated in our Brief in Opposition and herein, the Petition for Certiorari should be denied.

Respectfully submitted,

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September, 1966

APPENDIX

APPENDIX A

Final Decree of the Florida Circuit Court

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT

IN AND FOR DUVAL COUNTY, FLORIDA

IN CHANCERY

CASE NO. 66-2941-E DIVISION "B"

JACKSONVILLE TERMINAL COMPANY, a corporation,

Plaintiff,

—VS.—

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Bolin, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and the members of said organization,

Defendants.

Final Decree

This cause came on this day to be heard after due notice upon the plaintiff's application for a permanent injunction against the defendants, Brotherhood of Railroad Trainmen, an unincorporated association in its own right and as representative of its membership, and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood, and the members of said organization; Order of Railway Conductors and Brakemen, an unincorporated association in its own right and as representative of its membership, and T. C. Bolin, individually and as an official of said brotherhood, and the members of said organization; Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association in its own right and as representative of its membership; and the members of said organization, having been previously heard on May 28th and 29th, 1966, on plaintiff's application for temporary injunction which, after consideration by the Court, was entered May 30th, 1966, against each of the above named defendants.

The Court has reviewed the testimony at the proceeding for temporary injunction, the briefs of the respective parties filed herein, and has considered the Stipulation filed herein by the parties July 29, 1966, as well as additional documentary evidence filed on behalf of both plaintiff and defendants.

The Court, having considered the argument of counsel and being advised in the premises, makes the following findings of fact and conclusion of law:

1. Plaintiff, Jacksonville Terminal Company ("Terminal Company"), is a private corporation organized and existing under the laws of the State of Florida, with its principal place of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at

Jacksonville, Florida, where it owns and operates a passenger station, yards, tracks, buildings and equipment; and provides passenger, freight and switching services for the Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, the Georgia Southern and Florida Railway Company, the Southern Railway Company, the Florida East Coast Railway Company and many industries and businesses of Duval County, Florida. The plaintiff and the other named rail carriers are all "employers" subject to the Railway Labor Act. Plaintiff also employs its own officers and employees who are responsible for the day-to-day operation of Terminal Company and has a separate labor agreement with the defendant Brotherhood of Railroad Trainmen covering Terminal Company employees only. There is no dispute under this agreement between Terminal Company and Brotherhood of Railroad Trainmen for which that defendant seeks to picket the premises of Terminal Company and said agreement remains in full force and effect. The other named labor organizations do not represent any employees on the property of Terminal Company and have no dispute with plaintiff.

2. The defendants Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen, and Brotherhood of Locomotive Firemen and Enginemen are all unincorporated labor organizations whose memberships are composed predominantly and overwhelmingly of employees of employers subject to the Railway Labor Act and are engaged primarily in representing such employees concerning labor disputes, rates of pay and working conditions in the railway industry.

3. The defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen, and

by his own admission is in charge of promoting the acts and things hereinafter enjoined. The defendants Lowell Kennedy and T. C. Bolin, individually and as officials of of the defendant brotherhoods, together with the membership of said brotherhoods, have participated in active concert with the defendant Ray Moore.

4. This action arises under the Constitution and laws of the State of Florida and this Court has jurisdiction of the subject matter and of the parties hereto.

5. On May 4, 1966, at or about 4:00 a.m., the defendant Brotherhood of Railroad Trainmen established picket lines at numerous locations surrounding the premises of plaintiff so that said premises were effectively cut off from all rail movement. Said pickets patrolled at all entrances and exits by rail, foot or vehicle and resulted in a substantial cessation of the activities and business of Terminal Company and caused the employees of said Terminal Company to fail to report to work. All defendants have announced their intention to cause such picketing and patrolling of the premises of plaintiff to be renewed unless this injunction issue, or unless the defendants are otherwise enjoined.

6. All of the persons picketing the premises of Terminal Company on May 4, 1966, were members of local lodges composed solely of employees of employers subject to the Railway Labor Act. All pickets were employees of the Florida East Coast Railway Company, an employer subject to the Railway Labor Act.

7. Counsel for defendants announced at the beginning of taking of evidence in this case and the Court finds that if the picketing was resumed as threatened, it would result in a virtual cessation of activities not only of the Terminal

Company but also of numerous industries in Duval County and throughout the remainder of the State of Florida. The picketing, if resumed, would adversely affect all of the people who are served by and do business with plaintiff and all railways served by the plaintiff. It would, further, adversely affect an entire economic area, from Duval County to Key West, Florida, and would cause economic strangulation of the entire state. The announced purpose of the picketing is to cause the plaintiff and its employees to cease furnishing services to the Florida East Coast Railway Company (FEC), against whom the defendant brotherhoods are now on strike, and thus to bring the operations of the FEC to a halt; the effect of the picketing is considerably more broad, as above stated.

8. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

9. The Court concludes that the past and threatened picketing as described above is in violation of the law of the State of Florida and that this Court has the jurisdiction to enjoin the threatened picketing on that basis. The past and threatened picketing seeks to coerce plaintiff into embargoing the FEC in violation of the Restraint of Trade Laws of this State, Chapter 542, Florida Statutes. Further, the picketing seeks to force the plaintiff to violate its duties and obligations as a carrier under the Florida Transportation Act, F.S. §§ 351.12, 351.14, 351.15, 351.16, 351.17 and 351.19, and did and will constitute economic pressure in the nature of a secondary boycott which is illegal under Florida law. Finally, the past and threatened picketing did and will unjustifiably interfere with and interrupt plaintiff's constitutional right to carry on its business, and said

picketing constitutes the independent tort of unjustifiable interference with the contractual relationships between plaintiff and its shippers and between plaintiff and its employees. Plaintiff has been and will be subjected to irreparable injury for which no adequate remedy at law exists. It is, therefore,

ORDERED AND DECREED that the defendants, Brotherhood of Railroad Trainmen, Ray Moore, Lowell Kennedy, Order of Railway Conductors and Brakemen, T. C. Bolin, and Brotherhood of Locomotive Firemen and Enginemen, individually, and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with either the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, or the Brotherhood of Locomotive Firemen and Enginemen, and all persons receiving notice of any such orders of the Court, are permanently enjoined and restrained from:

(a) Picketing the properties owned or operated by plaintiff in Jacksonville, Duval County, Florida, except at the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(b) Causing, directing, authorizing, recommending, sanctioning, or participating in the patrolling, picketing, or blockading of the entrances or exits used by the employees of plaintiff in connection with their work or in connection with plaintiff's land, buildings, facilities or other property operated, owned or controlled by plaintiff; PROVIDED, HOWEVER, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(c) Causing or inducing the employees of plaintiff who report for work at the Terminal Company to cease performing the duties of their employment;

(d) Interfering in any way with the operation of plaintiff's properties by plaintiff.

(e) This injunction is limited to the picketing of plaintiff's premises by the defendants arising out of defendants existing disputes with the Florida East Coast Railway Company.

It is FURTHER ORDERED AND DECREED that the plaintiff, Terminal Company, a corporation, and its surety, Federal Insurance Company, a corporation, be and they hereby are released and discharged from any and all further liability under the bond heretofore filed herein in the amount of $25,000.00 and said bond be and it hereby is cancelled and rendered null and void.

DONE and ORDERED in Chambers at Jacksonville, Duval County, Florida, this 29th day of July, A. D. 1966.

/s/ ROGER J. WAYBRIGHT
Circuit Judge

END